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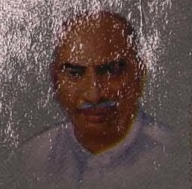

M.A.

First Year

Paper - II

Modern Western Governments

PUBLIC ADMINISTRATION

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PUBLIC ADMINISTRATION

M.A., First Year

Branch
Paper – II

Modern Western Governments

MADURAI KAMARAJ UNIVERSITY
MADURAI – 625 021

DEAR STUDENT,

You will find the syllabus and the scheme of lessons for this paper. Please go through them before you start reading the lessons. The entire scheme consists of 10 units. You are advised to read the lessons and come prepared for the contact classes. In addition to the lesson sent by the Directorate, you may aiso refer to the books recommended in the syllabus.

We wish you all success,

Department of Public Administration

MODERN WESTERN GOVERNMENTS

Syllabus and Scheme of Lessons

UNIT - 1

MODERN WESTERN GOVERNMENTS - CONSTITUTION - CLASSIFICATION OF CONSTITUTIONS

INTRODUCTION

In this unit the common features of different constitution are analysed. In the present circumstances the students must know the features of political systems in the world. The meaning of state, constitutions are classified are explained in this unit. Before going into the details of each and every constitutions, it is interesting to learn the common features of constitutions.

OBJECTIVES

To understand the meaning of state and constitution.

To know the merits and demerits of written and unwritten constitutions.

To understand, how the customs, conventions and usages help the growth of the constitutions.

It is interesting to learn about the Federal and unitary features of modern political systems.

The important features of cabinet government, Parliamentary and presidential system are learnt.

UNIT STRUCTURE

Definition of Constitution

Classification of Constitutions

Written or Unwritten Constitution

Flexible and Rigid Constitutions

Conventions and Usages

Parliamentary Government

Features of the Presidential Executive

The Plural or Collegial Executive

Unitary Constitution

Federal Constitution

Rule of Law

Administrative Law or Droit Administratif

1.1 DEFINITION OF CONSTITUTION

The earliest definition of constitution was that of Aristotle who called it 'the organization of offices in a State and determines what is to be the governing body and what is the end of the community'.

A constitution is the skeleton of the State. It codifies the power relationship between the government and the people. Woosley defines it as "the collection of principles according to which the powers of government, the right of the governed and relations between the two are adjusted". Every act of a State, carried out by its government, must conform to the rules of its constitution. Thus a constitution curbs the powers of government vis – a – vis the individuals.

1.2 CLASSIFICATION OF CONSTITUTIONS

In ancient times, Aristotle's classification of constitutions was the only major one. He analysed the various constitution at work in several Greek City States and as a result of his observation, he classified the constitutions into three major forms: rule by one, rule by few and rule by many. Each of these forms was again divided into two normal forms and prevented form. In the normal form, rule by one was called 'Monarchy', its perverted from 'Tyranny'. When a few people ruled the State for common good, it was 'Aristocracy'. When the rule by few was to their own selfish interests, 'Oligarchy'. In a normal State wherein a rule by many sought the common welfare, it was a 'Policy' while its prevented form was called a 'Democracy'. According to Aristotle. these types of government follow one another in the form of a cycle.

Political thinkers of the modern period have attempted to classify constitutions in different methods. Jean Bodin has classified constitutions, on the basis of the number of men who possessed sovereign power. Where

sovereignty vested in the hands of citizens, it was an aristocratic state; when in less than a majority of citizens, it was an aristocratic state; when the majority exercised sovereign power, the State was called democracy. Bodin further classified monarchy into (a) pure, (b) despotic and (c) tyrannical types.

Montesquieu has classified states into three forms. They were: republican, monarchical and despotic. Republican form was again sub – divided into two classes: democratic and aristocratic. The main feature underlying a democratic constitution was the spirit of public service. The basis for aristocracy was the principle of moderation, for monarchy honour, and for despotism fear.

Bluntschli accepted Aristotle's classification as fundamental. He has added to that, Theocracy, or rule according to religious principles. The perverted form of Theocracy, according to Bluntsehli, was Idolocracy.

A more recent classification of constitutions is that of C.F.Strong, which has been widely accepted. Strong classifies constitutions on the basis of: (1) the nature of the state to which the constitution applies; (2) the nature of the constitution itself; (3) the nature of the legislature; (4) the nature of the executive and (5) the nature of the judiciary. In such a classification, Constitutions with one attribute in a group may differ in another. There is a lot of variations among them.

Based on the nature of the State, constitutions can be classified as unitary and federal. The nature of constitution itself distinguishes it as to whether it is written or unwritten, whether it is flexible or rigid. When constitutions are classified on the basis of the nature of the legislature, they are further sub – divided in relation to (i) the electoral system – whether adult suffrage is there or not; (ii) the kind of Constituency – whether single member or multi – member constituency; (iii) the types of Second chamber – whether elective or non – elective; and (iv) the presence of direct popular checks over the legislature. The nature of the executive differentiates as to whether they are parliamentary and non – parliamentary. Constituency also differ on the basis of the nature of judiciary they ordain, they are either subject to the Rule of Law or under Administrative Law.

1.3 WRITTEN OR UNWRITTEN CONSTITUTIONS

A written constitution is one in which the principles regarding the governance of a State are embodied in a formal written document or documents.

It may be a single document as in the case of the U.S. and Indian Constitutions or a series of documents as those of Austria and the Third Republic of France.

On the other hand, an unwritten constitution is one in which most of the fundamental principles of governmental organization have never been reduced to writing and contained in a single or a number of documents. The Constitution of the United Kingdom is a typical case at hand. Customs and conventions go long way in the making of an unwritten constitutions.

ADVANTAGES OF A WRITTEN CONSTITUTION

The major advantages of a written constitution are:

(1) Clarity and definiteness : The written constitution clearly states the rules for the running of the government.

(2) The fundamental rights of the citizens are enumerated in it; as such, they are also protected by the judiciary ordained by the constitution itself.

(3) It is more stable in that it is not affected by the changes in government. As Finer says, written constitutions "secure a form basis for political life".

(4) As the constitution law is clearly written, it is not liable to frequent amendments. Of course, there may be modifications, but they are not frequent.

DISADVANTAGES

The written constitutions do have some disadvantages. Being the supreme law of a land, a written constitution is usually made amendable only by a special process. In that case, it becomes rigid and does not keep pace with the changing times. Subsequently, people come to dislike it any rise in revolution against it.

MERITS OF AN UNWRITTEN CONSTITUTION

An unwritten constitution, on the other hand, prevents popular revolutions, because of its elastically and adaptability. When people do not like it, they change their conventions and usages, thereby automatically amend the constitution. As the time – hououred customs influence, the growth of an unwritten constitution, it is bound to be conservative in nature.

DEMERITS

The possibility of frequent changes in an unwritten constitution, however, makes it more unstable than a written one. As it is amended frequently, it becomes a plaything in the hands of politician who use it for their own ends. Thus it is unsuited for infant democracies which are not matured enough to accept it; their people are suspicious about the nature of the constitution itself for want of clarity in it.

Division of constitution into written and unwritten is a false one. For no constitution is completely written or unwritten. A few customs have modified the work of a written constitution. In the U.S., for example, the cabinet has not been envisaged by the constitution; yet, it has been evolved by conventions. Nor is an unwritten constitution completely devoid of any written instruments or constitutional law. The constitution of the U.K. said to be (1689) and the Parliament Acts of 1911 and 1949, which curtailed the power of the House of Lord vis – a – vis the House of commons, are part and parcel of the British constitution. Thus a classification of constitutions on the basis of whether they are written or unwritten becomes illusory.

1.4 FLEXIBLE AND RIGID CONSTITUTIONS

According to C.F. Strong, the true ground of division, by virtue of the nature of the constitution itself, is whether it is flexible or rigid. The ground of difference lies in the process of constitutional law making whether it is identical with the process of ordinary law – making or not. The constitution which can be altered or amended without any special machinery is a flexible constitution while the one that requires a special procedure for the same purpose is a rigid constitution. The British Constitution is a flexible one. For it does not differentiate between constitutional law and ordinary law. The same legislative procedure is adopted there for both constitutional and ordinary laws. The American Constitution, on the other hand, is a rigid one because it is immensely difficult to amend it. This fact is borne by the fact since its adoption in 1789, the American constitution has been amended more than 26 times only.

Check Your Progress

1. What is Constituion?
2. Bring out the advantages of Written Constitution?

ADVANTAGES AND DISADVANTAGES OF A FLEXIBLE CONSTITUTION

Where a Constitution is flexible, its elasticity and adaptability help the government to achieve its goal without much difficulty. The government can amend the constitution in accordance with the declared objectives of the State.

A flexible constitution also reflects the Public Opinion prevailing in the State in which it works. Under such circumstances, the possibility of people rising in revolt against the State is remote.

Being unstable, however, a flexible constitution lacks permanence. It becomes an easy prey to amendments and the running political party is ever tempted to amend the constitution according to its own whims and fancies. Sometimes it may result in the abrogation of the fundamental rights of the individuals. Thus there is every chance of a flexible constitution becoming an instrument to curb the interests of the people for whom it is meant.

MERITS AND DEMERITS OF A RIGID CONSTITUTION

A rigid constitution prevents the government from assuming too wide powers, by prescribing the exact limits of its powers. The fundamental rights of people that are enshrined in a constitution are well guarded if it be a rigid one. For, the government cannot tamper with the constitution easily. A rigid constitution is more stable than a flexible one because the process of amendments in the former is more difficult than in the latter. Subsequently, a rigid constitution which enjoys the confidence of the people, is not subject to frequent amendments based on popular emotion.

On the other side of a coin lies the cruel fact that a rigid constitution may cause a revolution because it is difficult to amend it in the usual way. It requires a cumbersome procedure. A constitution has to be elastic if it were to be successful. A rigid constitution, however, lacks adaptability. Hence, it is conservative in nature. By making fundamental rights not easily amendable, a rigid constitution gives too much importance to minorities and judiciary, proclaiming that the rights of the former would be protected by the latter in case of their violations. Such circumstances force political parties use the constitution to achieve their own narrow political ends.

Written constitutions are generally rigid whereas unwritten constitutions are generally flexible. As Esmein and Judge Jameson point out, unwritten constitution "is suitable to a people who have a strong sense of tradition and a profoundly conservative in spirit". A nation where political consciousness is lacking, however, would be better served by a written, rather than an unwritten constitution.

Check Your Progress

3. Examine the disadvantages of Rigid Constitution?

1.5 CONVENTIONS AND USAGES

Almost all the constitutions, whether written or unwritten, grow by customs and conventions. The British constitution is the one which has mostly affected by conventions. Conventions are long – used customs, which in turn, are social habits with no formal legal procedure. They are drawn as a legacy of the past and are respected in all civilized communities, though they are not reduced to a written form. These habits form the root for the development of an unwritten constitutions. As finer observes, "Conventions are rules of political behaviours not established in statues, judicial decisions or parliamentary customs, but created outside these, supplementing them in order to achieve objects they have not yet embodied".

Conventions are based on usages and their binding force is derived from the willingness of people to be so bound. If obedience to law is a fundamental duty, obedience to conventions is a political obligation. Both laws and conventions regulate the structure and functions of governments and there are the result of common consent. Laws and conventions differ, however, in that the former are written, having been passed by a legally constituted body like Parliament. While the latter are extra – legal, growing out of practice. In the British Constitution, for example, the transfer of executive powers from the crown to the cabinet grew as a practice and was not a legal principle. While laws are proclaimed in precise terms, conventions are only customary practices. As such, laws are enforceable in courts of law whereas conventions are not, because they have no legal sanction behind them.

Why then should conventions to obeyed at all? It is because violation of conventions may lead to beach of law. For example, if the British Parliament does not meet at least once a year as per conventions, it cannot pass the budget for the year; subsequently, no taxes can be collected and the state machinery would come to a beach – of – law. If the speaker of the House of Commons does not resign from the membership of his party after getting elected to the office, it is violation of conventions, but not only law. Conventions form the code of political behaviour in Britain. They are observed because they are a code of honour, sanctioned by public opinion. (For a detailed study of conventions and usages read the constitutions of England.)

PARLIAMENTARY SYSTEM OF GOVERNMENT

1.6 PARLIAMENTARY GOVERNMENT

The acceptance of the theory of Separation of Powers as a principle in politics has resulted in the emergence of two types of government in the modern world, the Parliamentary or the Cabinet type, and the Non-Parliamentary or the Presidential type. Of the two types the cabinet type is more popular and adopted by many countries. Britain can claim credit for having evolved the cabinet or parliamentary government in the first half of the eighteenth century after a struggle between Parliament and the absolute Stuart Kings. The example of England was copied by other countries like Australia, Canada, France, India and Japan.

The Parliamentary government is also called responsible government or executive and the parliamentary system is often referred to as the cabinet system. According to J.W. Garner "Cabinet government is that system in which the real executive – the Cabinet or ministry – is immediately and legally responsible to the legislature for its political policies and acts and ultimately and legally responsible to the legislature for its political policies and ultimately responsible to the electorate; while the titular or nominal executive – the Chief of State – occupies a position of dignity or status:. In the cabinet system, the Cabinet is nothing but a committee appointed by and responsible to parliament.

FEATURES OF CABINET GOVERNMENT

Cabinet is the executive namely nominal and real. The nominal executive is the head of the state and authority is exercised in his name. For example in India the President is nominal executive and he is the head of Government. He is indirectly elected for a term of five years and the rise and fall of Cabinets do not affect his position,

The real executive power is vested in the Cabinet, which can remain in power only as long as it commands the confidence of the legislature. The real executive commands vast powers and actually rules the country. The nominal executive has to act according to the advice of the Council of Ministers : and there will be a constitutional crisis, if he acts contrary to it. The President in India or the King in Britain acts according to the advice of the Prime Minister.

REAL EXECUTIVE – MEMBERS OF PARLIAMENT

While the nominal executive or heads of state are non-party men, who shall not be members of Parliament, the members of the Cabinet in a Parliamentary government have to be members of the legislature. For instance in India or U.K. if a minister is not a member of the legislature at the time of his appointment he has to become one within six months after his appointment, failing which he has resign.

PRINCIPLE OF FUSION OF POWERS

While the presidential system is based on the principle of separation of powers, the cabinet system is based on the principle of fusion of powers. Thus in the hands of ministers, the executive power to issue orders and the legislative power to introduce bills are fused. Two types of powers are concentrated in the same hands.

THE CABINET IS A COMBNING COMMITTEE

The Cabinet is a hyphen which joins a buckle which fastens the legislative part of the state to the executive part of the state. The connecting ling between the executive and the legislature is the Cabinet. The Cabinet is the greatest of many committees f the legislature.

SUPERIOR POSITION OF THE PRIME MINISTER

The Prime Minister is the head of the Cabinet and commands very great power and prestige in the country. He is the most powerful of its citizens. He is also the leader of the parliament. Again he is the person through whom the head of the state normally communicates with the Cabinet. He is also the head of the party in power.

According to Jennings the Prime Minister is like the sun around which planets rotate. Actually the members of the Cabinet hold office during the pleasure of the Prime Minister. The Prime Minister is the actual ministry – maker, though the nominal executive appoints the ministers technically. It is the Prime Minister who distributes portfolios among ministers. He acts as a link between the nominal executive on one side ad his colleagues and legislature on the other. The Prime Minister is the key figure in the country, and the people expect from him a good government. Upon him depends the success or failure of the government.

POLITICAL HOMOGENEITY

The cabinet can function well only when all ministers belong to the same party and hold identical views. Political homogeneity is an essential feature of the cabinet system. There is no homogeneity, when no single party in parliament emerges as a majority party, and a coalition Cabinet is formed.

RESPONSIBILITY OF THE CABINET TO THE LEGISLATURE

The cabinet can formulate its policies, direct the administration, raise and spend money, and attend to several types of functions, provided it is responsible to the legislature. The cabinet collectively and the ministers individually have to responsible to the legislature. The cabinet is forced to resign, when its continuation is not considered desirable by the legislature. It must be remembered that it is parliament which votes money grant, which form the life – blood of the government.

EXECUTIVE IS SUBORDINATE TO THE LEGISLATUTRE

Under the cabinet system the executive is completely under the control of the legislature in administrative, financial and other matters. The ministers should bear in mind that they are subject to parliamentary control and the roots of their power lie in the confidence of parliament.

PARTY GOVERNMENT

A parliament government is essentially a party government: government is formed by the political party, which is able to secure a majority of seats in the Parliament. Cabinet system can function smoothly only in a country with a two - party system in which one party is in power and the other party is in the opposition.

JOINT RESPONSIBILITY

Collective responsibility is another basic principle of the cabinet system. Ministers are expected to work together with perfect harmony and understanding. The Prime Minister brings about co – ordination in the work of the various ministers. In Parliament or outside, ministers should not criticize one another and issue conflicting statements.

MERITS AND DEFECTS OF CABINET GOVERNMENT

Merits:

1. Harmonious co – operation between the executive and the legislature is one of the merits of the cabinet government. The system secure secures prompt, expeditious and efficient government action.

Check Your Progress

4. What is Parliamentary Government?

2. Cabinet government is the best example of representative democracy. It places the administration under direct and constant responsibility to the popularly elected chamber and therefore indirectly to the electorate itself.

3. Elasticity and flexibility are the merits of the cabinet system of government. In the cabinet system, people are ready for a change in government, when the executive has failed to perform its duties.

4. Good leadership is possible in a cabinet system. Capable men aspire to be members of the legislature in a parliamentary democracy.

Defects

1. The cabinet system is a negation of the theory of the separation of powers. In the cabinet system we find the fusion of legislative, executive and judicial powers.

2. In the cabinet form there is no single executive head. Though in the cabinet system, there is the ascendancy of the Prime Minister, he has to give consideration to the opinion of his colleagues and make compromises with them in order to get their support.

3. The rise of dictatorial power in the hands of the Cabinet is another defect of the cabinet system. They have been examples of Cabinets openly flouting public opinion, ruling arbitrarily and taxing people heavily and indiscriminately with the support of the majority party.

4. **Government Instability:** When the party system in a stage functions unsatisfactorily, and there are many mushroom parties, no stable government is possible, and the state cannot progress. Owing to instability of Cabinets, continuity of policy is not possible.

5. **Government by Amateurs:** As ministers are generally appointed according to party principle and not according to their merit and aptitude, the standard of government may not be high. it is difficult for such ministers to direct work and get things done in their respective departments.

PRESIDENTIAL GOVERNMENT

Check Your Progress
5. Point out the merits of Parliamentary Government?

In the cabinet system, the real executive is responsible to the legislature, in the presidential system, the executive is not under the control of the legislature. While the executive in the parliamentary system is drawn from the legislature and is responsible to it, the presidential executive is neither drawn from the

legislature nor responsible to it. In the presidential system, the head of the state is also the head of the government.

1.7 FEATURES OF THE PRESIDENTIAL EXECUTIVE

In the presidential system there is only one executive, and that is real. The head of the state is not only the Chief executive, but the executive. The President of the U.S.A. is a good example. The presidential executive is not hereditary or nominated, but elected by the people. While ministers in England are the representative of the people. While ministers in England have to be members of the legislature, the U.S. President is not and in fact he should not be. Here the principle of separation of powers is followed in the government. The presidential executive has a fixed tenure before the expiry of which he need not quit. In the presidential executive has a fixed tenure before the expiry of which he need not quit. In the presidential system the tenure of the executive is independent of the wishes of the legislature. Under this system the legislature is not empowered to control and direct the executive. In the presidential system the principle of separation of powers is followed. The presidential executive is neither the member of the legislature nor present in the legislature to initiate and pilot bills. In this system, the ministers are the subordinates of the President.

The ministers are appointed by the President, are responsible to him, and remain in office so long as he wishes them to be. Again the ministers or secretaries do not hold collective responsibility with the President. They are not members of the legislature, and question of their responsibility to the legislature does not arise.

MERITS OF PRESIDENTIAL GOVERNMENT

1. As the term of the executive is fixed, the executive can have a proper continuity of policy and stability. The policy of the government can be successfully carried out without any fear or break.

2. The Presidential executive can take decisions promptly. Power is concentrated in the hands of the executive, which does not share it with any one. As it is not responsible to the legislature, prompt and vigorous action can be taken.

3. The Presidential system also makes possible the appointment of experts to head the departments and without consideration of party affinities.

The President may even appoint persons not belonging to his own party. On the other hand, the Prime Minister in the parliamentary system, has to please members of his party by selecting ministers only from the party.

4. The Presidential system is good for countries inhabited by different communities with diverse interests.

5. The Presidential system in not under the evil influence of political parties. The evils of the party system very much in evidence in the parliamentary system do not control President.

Defects

1. As the presidential government is based on separation of powers, it divides government into water-tight compartments. So the harmonious working of government is difficult.

2. Lack of direct initiative in legislation on the part of the executive is really a very serious defect in the President system of government. In the presidential system, the executive must remain satisfied only in sending messages to the legislature.

3. The presidential form of government is characterized to be autocratic, irresponsible and dangerous. In the parliamentary system, the legislature, which controls the executive, may even send out the executive from authority if it turns irresponsible and autocratic.

4. The presidential executive finds it difficult to follow a consistent and vigorous foreign policy, as there is no harmonious relationship between it and the legislature.

5. The presidential system suffers from the defect of rigidity. For example rigid rules made the holding of elections obligatory even during war or a great national emergency.

1.8 THE PLURAL OR COLLEGIAL EXECUTIVE

Check Your Progress

6. What is Presidential Government?
7. Describe the Plural Executive.

The Swiss executive is a modern example of a plural executive. It is a mixed type of government. It combines the merits and avoids the defects of both parliamentary and non-parliamentary forms of government. It guarantees against dangers of executive abuse and oppression. It renders more difficult executive infringements upon the legislature and the rights of the people. It

cannot invade the power of other departments as an individual can. It is likely to possess a higher degree of ability and wisdom than is to be found in a single person.

Executive power involves much more than ministerial functions of executing the will of the legislature. It repairs the formulation of constructive policies and important powers of directions requiring judgement and discretion which may be found more easily in a body of persons than in a single individual.

A great defect of the plural executive is that it lacks unity, vigour and energy that characterize the single executive. Further it is difficult to locate responsibility for actions done by the executive.

UNITARY AND FEDERAL CONSTITUTIONS

1.9 UNITARY CONSTITUTION

All Constitutional States belong to either of the two great classes of constitution viz., Unitary or Federal. According to Prof. C.F.Strong, "a Unitary state is one organized under a single central government". In a unitary state, the central government has all powers over its parts and there are no restrictions in its exercise of powers. Prof. Dicey has defined Unitarianism as :"the habitual exercise of supreme legislative authority by one central power". The powerful central government merely delegates some of the power to its units and there is no division of powers between the Centre and States envisaged by a federal constitution.

The essential feature of a unitary constitution is that sovereignty remains undivided, that is, the powers of central government are unrestricted. The central law-making body is supreme. But it can delegate some of its powers to subsidiary law-making bodies like the local authorities. When there is conflict between the centre and the units, however, the former has overriding powers over the latter. Thus the essential qualities of a unitary state are the supremacy of the central parliament and the absence of subsidiary sovereign bodies. On the other hand, a federal state has two kinds of legislature the federal and the state, neither of which is universally supreme. The second major difference between the unitary and federal state lies in the fact that while in the former, powers are granted to units at the discretion of the centre, in the fact that while in the former, powers are granted to units at the discretion of the centre, in the

latter, powers are clearly divided among the federation and states by the constitution itself. In a unitary state, the central government can either enhance or diminish the powers of units, nay, it can make or unmake them as its will. But in federal, only the constitution can do it, when it consulting the wishes of the various states constituting the federation. In this way subsidiary sovereign bodies are absent in a unitary state while they exist in a federal state. Some of the unitary states are the United Kingdom, France, Ireland, Japan, New Zealand, South Africa and Italy.

Merits of Unitary Constitution

As the government of a unitary State is highly centralized, its administration is simple and uniform. As Prof.Willoughby points out, "there can be no conflict of authority, no conflict or confusion regarding responsibility for work to be performed, no overlapping of jurisdictions, no duplication of work, plant, or advantage of a unitary constitution is that it can be easily amended whenever necessary. For it is generally flexible in nature. Moreover, a unitary constitution is well-suited to small countries with a homogenous population.

Demerits of Unitary Constitution

When the central government is granted sweeping powers over the units there is also a possibility of it becoming dictatorial in nature. The burden on the central government leads to red-tapism and bureaucratic interference. Since the central authorities often lack knowledge of the conditions and needs of the units, local interests are allowed to suffer. Also local initiative is discouraged. Thus, a unitary constitution becomes unacceptable to a people who love self-government and liberty.

1.10 FEDERAL CONSTITUTION

DEFINITION AND NATURE

C.F.Strong defines a federal state as "one in which a number states units for certain common purposes. "In a federal state the powers of the central or federal authority limit the powers of the units that have united for a common purpose. As Dicey points out, "a federal state is a political contrivance intended to reconcile national unity and power with the maintenance of state rights". New, arises the question of determination of powers belonging to the centre and the states. Here comes in the constitution. It is the constitution that

apportions certain powers to the central authority and the rest to the federation units or states. Garner remarks that a federal state is one in which the totality of governmental power is divided or distributed by the national constitution or organic Act or parliament creating it, between a central government and the governments of individuals states or other territorial subdivisions of which the federation is composed. In case of conflict between the federal power and the state power, the authority that decides between them, on the basis of constitutional provisions, is the Supreme Court. Thus, the main features of a Federation are: (1) the supremacy of the constitution, by means of which are federation is established, (2) the distribution of powers between the federal state amd the cp-ordinate states forming it and (3) the presence of a supreme authority to settle any dispute that may arise between; the federal and state governments. A federal constitution must be rigid in order to avoid frequent; hasty amendments.

CONDITIONS OF FEDERATION

The federating units of federal State are also called states, only due to paucity of language. For they lack sovereignty, which is an essential quality of a State. When a federation is formed, its units surrender their sovereignty to it. C.F. Strong states that's federal constitution attempts of reconcile the apparently irreconcilable claims of national sovereign and state sovereignty".

There must be a desire for union among the people of various federating units. Union, however, does not mean unity. The component parts must maintain their individual freedom in essential local matter. Geographical continuity of the Units is also necessary to make the federation strong. There must be no inequality among the Units. None of them should be more powerful than the rest. Above all, the people of federating Units must have a high political education and should be ready to obey the laws of both federal and state governments.

DISTRIBUTION OF POWERS IN A FEDERATION

The principle on which governmental powers are distributed between the federal and state governments is that subjects of national importance like defence, foreign affairs, currency, transport and communication are delegated to the central government whereas subjects that do not require uniform regulations for the whole State are allotted to the local or state governments.

Check Your Progress

8. Distingush between unitary and federal consitution?

There are three methods generally adopted in the distribution of powers in a federation. They are: (a) Powers delegated to the central government are defined in the constitution and all the remaining powers are left to the states. The object here is to check the powers are left to the states. The object here is to check the power of the federal authority as against the federating units. The constitutions of the U.S.A. and Australia fall under this category. (b) The constitution enumerates the powers of the federating units and leaves the "reserve of powers" to the federal authority. Where this method is followed, the aim is to strengthen the federal government at the expense of state governments. The Constitution of Canada belongs to this type. (c) Specific powers are assigned to the federal authority and units respectively, leaving the residuary powers to the former, as does the Indian Constitution. In addition to the Union list and State list of subjects, the Indian Constitution has a third list of subjects known as the Concurrent list on which both governments have jurisdiction. Even so, In case of conflict between the two, the union government is given overriding powers. K.C.Wheare prefers to call the Indian constitution quasi-federal because though it is federal in spirit, in its actual functioning, it is unitary.

ADVANTAGES OF FEDERAL CONSTITUTION

A federation provides opportunity to small and weak states to unite into a powerful state without losing their separate entities. The diverse elements present in a federation contribute to its strength. Division of powers among the federal and state governments increases the efficiency in administration, as the central government is greatly relieved of its workload. Socio-political and economic experiments can be better conducted at the state level than at the centre. Moreover, people of the units take active interest in public affairs only in a federal set-up.

DISADVANTAGES OF FEDERAL CONSTITUTION

According to Finer, federalism is financially expensive since there is much duplication of administrative machinery and procedure. There is also the possibility of conflict between the national and state governments in the exercise of their respective powers. Another characteristic of a federation, diversity, may lead to divided loyalties of the people-between the federal authority and the units. Subsequently, the danger of secession of the units from the federation is always imminent.

THE RULE OF LAW AND ADMINISTRATIVE LAW

1.11 RULE OF LAW

Definition

The Rule of Law is one of the special features of the political institutions of England. It implies the supremacy of law. By this, security is given to the rights of individuals. Where the Rule of Law is in operation, the Judges are the ultimate guardians of individuals rights. It is an unwritten law and it has only one set of courts.

The Rule of Law means that no man is punishable or can be lawfully made to suffer physically as well as materially except, for distinct violation of law established in the ordinary legal manner before the ordinary courts of the land. Further, it implies that none is above law and every one irrespective of distinction in birth or situation in life is subject to the ordinary law of the land. The State too is expected to abide by the law and not tamper with the rights and liberties of the citizens.

THE RULE OF LAW ENSURES

A) THE RIGHT TO PERSONAL FREEDOM:

This right means that an individual is not to be subjected to imprisonment without the due process of law. No individual can be arrested without warrant. There also can be no physical coercion when it has no legal justification. This right is enforced thus: the redress for unlawful arrest is sought through a writ that can be insured either on the application of the prisoner or by any one on his behalf. Deliverance from unlawful confinement is secured by means of the writ of habeas corpus.

B) THE RIGHT TO FREEDOM OF DISCUSSION

The Rule of Law permits every one to say, write or publish what each one pleases. This freedom is subject to the consequence of the Law of Libel (Amendment) Act, 1888, give special privileges to the press; which has enforced certain restrictions. The press also is subject to the ordinary law of the land. It is also tried and punished by the ordinary courts.

C) THE RIGHT OF PUBLIC MEETING

People are free to meet together in any place for lawful purposes in a lawful manner. Only when their meeting leads to breach of peace it can be dispersed. The government is free to interface in an atmosphere where, in its

opinion, the public meeting has provoked the sentiments of the opponents resulting in clash between the groups.

D) WHERE THE RULE OF LAW PREVAILS, THERE EXIST NO MARTIAL LAW

The soldier is also subject to the same criminal liability as a civilian. When there is difference of opinion between the military courts and the civil courts, the opinion of the latter prevails. This is not so in France where the Administrative Law prevails. In France the soldier is tried by military tribunals. In England he is tried by ordinary courts.

E) The Rule of Law dictates that the Parliament alone be empowered to collect and spend the public revenue. Parliament can do so by enacting an Act for that purpose.

F) The action of every servant of the Crown is brought under the control of the Rule of Law. The Acts of the real executive are also subject to the Rule of Law.

MERITS

Because of the prevalence of the Rule of Law individual freedom is thoroughly protected in England. The government has little chance of pressing the people, judiciary has earned a name there. Judges are held in high esteem. People have confidence in the judicial bench. The civil servant is cautious and is obliged to be careful in the use of his powers. He is conscious that he will be held responsible for any wrong he does to the public.

DEMERITS

There is room for the government to turn the courts towards translating its objectives. We are aware that law has been slow to recognize the violation of duty by officials. The public may not have much confidence in the officials particularly when their attempts to seek remedy for grievances are delayed without proper reasons but mainly on account of official interference. It is not possible to secure justice when technical questions are referred to persons known for their confirmed ignorance and prejudice.

Check Your Progress
9. Explain the merits of Rule of Law

The analysis of Dicey as the one referred to earlier on the question of the Rule of Law is defective. He exaggerates the merits of the Rule of Law. The Rule of Law has its limitations.

It is accepted by one and all that the King can do no wrong. If this is so the Crown may not be made liable in tort. A servant of the Crown may take refuge under this principle. It is impossible to sue a department for breach of contract when it enjoys royal prerogative. Now with the extension of governmental activities into new fields it has become common to entrust to executive authorities, judicial duties, which if the Rule of Law prevailed without exception would be entrusted to the ordinary courts. The English practice, of late, does indeed give the appearance of an efficient safeguard of liberties. But on closer view this safeguard is found to be unsubstantial. Besides, the growth of the service has made the introduction of views that were sneered at as being continental. What we find today is that England tends more and more to adopt the French view.

1.12 ADMINISTRATIVE LAW OR DROIT ADMINISTRATIF

Montesquieu, the author of the Spirit of Laws (1748), in his theory of separation of powers forbade the judiciary to meddle with administrative matters. The executive was expected not to interfere in judicial matters. The executive was expected not to interfere in judicial matters. Administrative Law is a written and separate body of law dealt with by the administrative courts. Dicey defines it as "the body of rules which regulate the relations of the administration the respect for law. It states clearly and also determines the position and liabilities of all officials, the rights and liabilities of all private individuals and the procedure by which there rights and liabilities are enforced. The servants of the government are independent of and to a large extent free from the jurisdiction of the ordinary courts.

We shall now outline the characteristics of the Administrative Law. There is a clear distinction between the ordinary law and administrative law. Ordinary courts do not have jurisdiction over questions of administrative law. Questions involving administrative law must be referred to the Council of State which controls the legality of the administration. An official who is guilty of an act cannot be proceeded against or prosecuted by ordinary courts.

MERITS

The administrative law is suited to the spirit of the French institutions. The administrative tribunals are certainly very far from being mere departments of executive government. The Council of States does protect private individuals from the abuses of officials. It is, no doubt, an impartial and unimpeachable

Check Your Progress

10. Explain the Administrative Law?

body. The distinction between the personal fault of an official and damage resulting from the carrying out of official orders without any personal fault has afforded a valuable remedy to those who suffer from the misuse of official power. Administrative courts consist of experts. This is an advantage.

DEMERITS

The high authority of the Council of State detracts from that of the judicial courts. If the State agrees to pay damages, it means new form of protection is given to its servants. The executive, under the administrative law, is at once the aggressor and judge of the aggression.

COMPARISON

The Rule of Law and the Administrative Law are case-laws or judge-made laws based on precedents. Both have grown and not made. In England there does not exist true administrative law. In administrative law there is a distinction between courts and persons. This is not so in England. Dicey for England and Duguit for France claim that their respective laws protect the individual and safeguard their liberty. Both do protect the rights of citizens. Yet it is better to have something in black and white were it only to educate the people and to safeguard them from the corruption of officials. Administrative Law is favoured in modern times.

THE SEPARATION OF POWERS

1.13 SEPARATION OF POWERS

The power and authority of all governments are exercised through three major organs-legislature, executive and judiciary. No modern government is confined to these three organs only. Since the modern State has as its ideal the welfare of the greatest number, the functions of its government also have multiplied considerably. Consequently the channels through which the government operates have also increased in number. Normally only the aforesaid three major organs of government are taken into account and the rest are treated as mere appendages or auxiliaries of the major organs.

Since inter-dependence is the hall-mark of modern society, this trend is noticeable even in the sphere of government. In other words, no department of government can function fully independent of the rest. There should be a healthy inter-relationship between the organs of government for it to function effectively.

The theory of separation of powers studies the amount of separation or fusion that is advisable for the maintenance of individual liberty in the State.

The foremost exponent of this theory, Baron Charles de Montesquieu of France gave a clear exposition of it in his "The Spirit of Laws" published in 1748. Besides Montesquieu, several other theorists like Aristotle, Polybius, St.Thomas Aquinas, Jean Bodin, Marsiglio of Padua, Machiavelli, Backstone, James Harrington, John Locks, and many more have written about the separation of powers.

Montesquieu on Separation of Powers

Montesquieu, analysis of the concept of separation of powers was based on his knowledge of the English Constitution. He said, "when the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. Again there is no liberty, if the judiciary power be not separated from the legislature and executive. Were it joined with the legislature, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it then joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything where the same man or the same body, whether of the nobles or of the people, to exercise those three powers,.that of enacting laws, that of executing the public resolutions, and of trying the cases of individuals. Montesquieu's ideas found favour with a number of constitutions in the world, the notable ones being the U.S. constitution of 1787 and the French constitutions of the revolutionary period. Most of the modern constitutions contain at least the spirit of separation of powers in them.

THE PRESENCE OR ABSENCE OF SEPARATION OF POWERS IN A REPRESENTATIVE SELECTION OF MODERN CONSTITUTIONS

1.14 THE CONSTITUTION OF THE UNITED KINGDOM

Though the operation of separation of powers was noticed by Montesquieu in the English Constitution, a clear study of the working of the said constitution does not prove it so. It seems that the doctrine of separation of powers was never followed in Britain.

In a Parliamentary government like that of England a distinction is to be made between the real and the nominal executive. The nominal executive in England is the Crown symbolized by Her Majesty the Queen and the real executive is the Cabinet headed by the Prime Minister. Though the position of the nominal executive is free from legislative and judicial controls, that of the real executive is not so. A study of the working of the three organs of government would show clearly the amount of fusion of powers prevalent in England.

Let us, for instance, examine the position of the Lord Chancellor, a leading member of the Cabinet and of the government. He is a member of the Cabinet, the real executive, and he is also the presiding officer of the House of Lords, the upper House of Parliament. The Lord Chancellor is also the highest judicial official in the realm. Here we see one individual combining in him all the three powers of government.

Secondly, the House of Lords, besides being the second chamber of Parliament, is also the highest court of appeal. The Privy Council which contains in its ranks all ministers of the Cabinet has both legislative and judicial functions. It enacts delegated legislation and promulgates Orders-in-Council and its judicial committee is the highest court of appeal for certain territories of the British Commonwealth.

Thirdly, it is a parliamentary practice for all members of the Cabinet to be members of the legislature also. In its relation with the legislature the real executive, the Cabinet, has an upper hand, it is on its advice that the nominal executive power is with the Crown and the judiciary is a distinct branch of government. Yet in their working no organ of government is free from controls by the other.

1.15 THE CONSTITUTION OF THE UNITED STATES OF AMERICA

One of the modern constitutions to incorporate the ideal of separation of powers is the Constitution of the United States of America. John Adams, one of the U.S. constitution, was instrumental for the incorporation of this concept in it. The separation of powers was adopted to prevent tyranny and absolutism. Since it was found impracticable and undesirable to have complete separation of powers, the framers of the constitution added the concept of checks and balances also.

Article I, Section 1 of the constitution says; "All legislative powers herein granted shall be vested in a Congress of the United States."

Article II, Section 1 says, "The executive power shall be vested in a President of the United States of America."

Article III, Section 1 says, "The judicial power to the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time ordain and establish."

Such is the distribution of the three powers of Government in the United States of America. The tenure of the Congress is independent from that of the President. The latter cannot summon, prorogue or dissolve Congress. Under normal circumstances Congress cannot interfere in the election or removal of the President. The federal judiciary is also independent of the other branches of government.

Too rigid a separation of powers may lead to conflict and indecision. Separation of the various organs may prevent immediate agreement on matters that require immediate attention. The different departments may pursue different courses of action on similar matters. Such calamities have so far been successfully overcome in the United States. The gap between the executive and legislative departments has been successfully bridged by able Presidents. Even when these two branches of government were controlled by two different parties, the machinery of government has functioned smoothly. This has been made possible by the instrument of checks and balances.

Congress is checked by the President by his veto power. The legislature checks the executive through its powers of appropriation, impeachment and confirmation of nominations and treaties. The Supreme Court depends upon Congress for appropriations and appellate jurisdiction. The Presidential control over the judiciary is exercised by way of the former's power to appoint judges. The Supreme Court has power to declare laws passed by Congress and approved by the President as ultra vires of the Constitution.

What are the controls exercised by each organ of government over the other? Let us examine each department individually. Congress can impeach and remove the President from office. Under extraordinary circumstances,

Check Your Progress

11. Explain the theory of Separation of Powers.

even in the election of the President, Congress has a part to play. Congress can override Presidential veto. It has control over appropriations. It determines the structure of the executive wing of government. It formulates the policy of government. It can investigate into the conduct of executive officials. The Senate has power to confirm nominations made, and to approve treaties entered into by the President.

Congress can impeach and remove federal judges from office. It controls appropriations pertaining to the judiciary. It fixes the number of judges of the Supreme Court. It has power to create inferior federal courts. It regulates, subject to Article 11 of the Constitution, the jurisdiction of federal courts. The Senate confirms the nomination of judges made by the President.

The Supreme Court can interpret statutes, administrative regulations and treaties. It has the power of judicial review.

The President can veto bills passed by Congress. He can send messages to Congress. He can summon special sessions of Congress. He nominates judges and has the power of pardon of persons convicted of federal crimes.

The above-mentioned points show the amount of control exercised by one organ of government over the other. By these checks and balances no organ of government is allowed complete superiority over the rest. No one department can become autocratic or tyrannical.

We now notice that even in that constitution which is termed as an essay on the theory of separation of powers, there is little separation. It only shows that complete separation of power is neither feasible nor advisable, though a little of, it is essential for the maintenance of individual liberty. The implementation of at least a rudiment of this concept is possible only in a government that is non-parliamentary in nature.

SUMMARY

In this unit we have discussed important common features of constitutions. The meaning of the term state, constitution, give a clear understanding of the terms. The Cabinet government which is an important feature in modern government has been brought out. The basic concepts of constitutions have been summarized before studying in depth the different constitutions, the

general features of political systems are studied which will facilitate the learning of all constitutions.

KEY WORDS

Tyranny – flexible – deadlock – Oligarchy – Aristocracy – Polity – Division of power – Conventions – traditions – Collegial Executive – Plural executive

ANSWER TO CHECK YOUR PROGRESS

For Question No 1	Refer Section 1.1
For Question No 2	Refer Section 1.3
For Question No 3	Refer Section 1.4
For Question No 4	Refer Section 1.5
For Question No 5	Refer Section 1.6
For Question No 6	Refer Section 1.7
For Question No 7	Refer Section 1.8
For Question No 8	Refer Section 1.9 & 10
For Question No 9	Refer Section 1.11
For Question No 10	Refer Section 1.12
For Question No 11	Refer Section 1.13

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MODEL QUESTIONS FOR GUIDANCE

1. Define Constitution. Explain its importance.

2. Bring out the merits of written Constitutions.

3. Describe the theory of Separation of Powers.

4. Analyse the features of Parliamentary form of Government.

5. Distinguish Parliamentary and Non-Parliamentary types of executive with suitable examples.

6. What is a Federation? Explain its nature and characteristics with reference to two of the constitutions you have studied.

7. Distinguish between Rule of Law and Administrative Law.

8. Describe the theory of Separation of Powers.

UNIT - 2

GOVERNMENT OF GREAT BRITAIN

FEATURES OF CONSTITUTION - EXECUTIVE: MONARCHY

INTRODUCTION

A study of the British constitution is necessary for important reasons. Britain is called as the oldest constitution. And also it is called as the 'mother of Parliament'. British constitution is fully based on customs and convention. Another important fact is, it is a big imperialist ruler, because so many colonies were under its control including India and USA. The salient feature of constitution of Britain is discussed. The powers and functions of British monarch is analysed. The executive pattern is Britain is Parliamentary type. The role and position of monarch is thoroughly discussed.

OBJECTIVES

1. To know about the Historic Documents like Magna Carta, Bill of Rights and so on.
2. Conventions are the important features of British Parliament, which must be learnt.
3. To understand the position and privileges of Queen.
4. Why does kingship survives in UK

STRUCTURE

Law and people

Political culture

Basic features of the English Constitution

Historic Documents - Status

Common Law – Case Law

Law and Customs of Parliament

Executive - Monarchy

The Crown Distinguished from King / Queen

The Position of the Monarch

2.1 LAND AND PEOPLE

A comprehensive study of the British political system is necessitated by certain pertinent reasons. Britain is rightly regarded as the ancestral home of the modern parliamentary government; the British parliament is considered to be the Mother of Modern Parliaments, and her constitution though unwritten, is appropriately lauded as a testament of democracy. As Woodrow Wilson once observed, her political institutions have been incessantly in a process of development making the transition from her ancient to her present form of government. The secret of this outstanding feature of the British political system could be traced to three factors-homogeneous in its ethnic, religious and socio-economic composition, while the British people have a considerable degree of consensus on basic political issues and show a marked degree of deference towards political leaders.

The social context of British politics has its significant place in its geographical make-up, insular position and the density and distribution of population. Though a tiny country comprising a mere 0.2% of earth's land area, it ranks 75th in area among the nations of the world; with a population of 55 million she stands 10th among the countries demographically and in the case of density of population she occupies fourth place in the world.

In terms of physical composition, Britain is a group of island cut off from the European continent by a gap of 22 miles of sea called the English Channel. Its different parts are Scotland, England, Wales and Northern Ireland, apart from some minor parts like the Isle of Man, Jersey etc. Of these, Britain constitutes the greater part of the British Isles.

The geography and insularity of Britain have cast their definite impact on the social context of English politics. Being a set of islands Britain has not

required a large standing army, though she has done so for keeping a powerful naval strength which earned her the title "the mistress of the seas". The sea bound character of the people "not only closed the enemy out, shut the various nationalities of the United Kingdom in" (S.E. Finer). The kings of England, the most wealthy and powerful conquered Wales in the 14th century; Scotland was united with England and Wales in 1707 to form "Great Britain".

Though United Kingdom is a unitary with four major units-England, Scotland, Wales and Northern Ireland-each unit has some distinctive legal and political systems. The Scots, as citizens of a former state, still remain their own system of law, education, local government, and above all, their own Presbyterian Chruch. Ireland, conquered and annexed to the territory of Britain in 1800, could not be culturally absorbed on account of its being separated by the sea belt. Here most of the people subscribe to Roman Catholicism, while people in other parts of the United Kingdom are Protestants. This cultural alienation ultimately led to a rebellion in 1919 and to the emergence of the Irish Republic in 1922; but a narrow-strip of Northern Ireland has remained with the United kingdom. Since 1707 Great Britain is headed by a sovereign, descended from the German princely House of Hanover.

SHILS' CLASSIFICATION

After making a study of various forms of political systems as suggested by eminent writers right from the days of ancient Greeks to the modern days, we are led to the conclusion that there seems to be no single principle upon which a scientific classification can be made. No doubt, the principles adopted by the scholars are logical in their own way; but they lack universal application. The reason for this is the peculiar nature of states and any attempt to differentiate between them and classify them scientifically leads to results which have little or no practical value.

2.2 POLITICAL CULTURE

"Conservatism" is said to be the hallmark of the English national character. In political sense, it signifies that the English people do not like radical changes, although they are not against any change at all. What they really desire is that change, being the law of nature, should take place in a manner that there is no serious disturbance in the existing social and political order. The only exception to it can be found in the events of the mid-seventeenth

century when the English people beheaded their king; Charles I, in 1649 and abolished the monarchy and the House of Lords. However, the restoration of both in 1660 marked their return to the path of prescriptive constitutionalism. In this way, the English people have given ample proof of their being conservative and enlightened. The Glorious Revolution of 1688 was a grand event of bloodless coup; the accession of the Hanoverian dynasty to the English throne in 1707 happened without much noise. A close study of the constitutional history of England makes one agree with the observation of R.G. Neumann that "in less fortunate countries such changes take place to the accompaniment of protracted bloodshed and the lawful shadow of the civil war. In Britain they were announced in a speech from the throne".

It is the quality of enlightened conservatism that has given adaptability as well as change to the British political institutions. The English people resist change without being 'no change'. The binding link "is refusal to accept any broad for reforming society measures are considered strictly on their merits: English men love peace and have faith in the slow process of change that makes their character basically different from their counterparts in France.

The hallmark of enlightened conservatism in the English national character can by visualized in the behaviour of the two leading political parties. While the Labour Party has shown no inclination to accept the principle of scientific socialism as expounded by Marx, despite the fact that he lived in England from 1850 than from the "Capital" of Marx, the Conservatives have never been hostile to the ideology of their opponents. Thus, the Conservatives did not reverse the reform of the House Lords, effected by the Liberals in 1911 and the Labour in 1949 nor did they denationalise the iron and steel industry, nationalized by the Labour.

As in the other of countries of Europe, in England also the term Conservatism came into prominence towards the end of the 18th century as a stern reaction against the principle of the French Revolution whose best representation appeared in the historic oration of Edmund Burke. His conservatism became evident from his insistence that any reform in the existing social and political institutions must be made with equity and a consideration to preserve. He favoured gradual reform and not radical innovation. This is evident from his denunciation of the ideals of the French Revolution and eulogy of his prescriptive Constitution. He said, "Our Constitution is a prescriptive Constitution; it is a constitution whose sole authority is that it has existed time

out of mind..... Your king, your lords, your judges your juries, grand and little, all are prescriptive...."

2.3 BASIC FEATURES OF THE ENGLISH CONSTITUTION

England unlike other countries of the world, has not felt the need "to spell out for all time and for the pecuniary benefit of lawyers, the principles of government in a simple constitutional document" (D.V. Verney). As such the English Constitution is not primarily a document distilling the abundant wisdom of an oppressed people, the inspired wisdom of revolutionaries and the common sense of contemporary politicians anxious to limit the sphere of government. Yet, the Constitution exhibits astonishing features which are discussed below:

1. The English Constitution is an evolved constitution i.e. it is the result of gradual growth, not of a deliberate make. It was never made in the way as the American Constitution was made by the Philadelphia Convention of 1787. The Constitution was neither created by a constitution making body not proclaimed by a monarch at any particular period of history. It is the result of evolutionary process spread over many centuries.

2. The English Constitution is a model of unwritten Constitution. The written part is limited to some important charters, granted by the Monarchs, statutes passed by the Parliament and decisions given by the courts. The larger part of the Constitution is unwritten i.e., in the form of numerous usages, customs, and precedents. These customs relate to the office of the monarch, the prime minister, the cabinet and the Parliament.

3. The English constitution is the most flexible Constitution in the world. This is due to its unwritten nature. The English Constitution can be amended just like the amendment of the ordinary law. It requires procedure or special majority. In fact, there is no distinction between a constitutional law and an ordinary law in England.

4. The British Constitution is unitary. There is only one central government and one legislature for the whole country. All the powers are concentrated in the central government located at London. The British Parliament is sovereign and it can make any law for the whole country or part thereof. The powers enjoyed by the local authorities are delegated to them by

the central government which could withdraw those powers from them at any time.

5. The British Constitution has established Parliamentary form of government. In this type of government there are two executives-the nominal and the real executive. The queen is the nominal executive and the real executive is the cabinet under the prime minister. The real executive viz. the cabinet is drawn from, responsible to and removable by the legislature.

6. Supremacy of the Parliament is another feature of the English Constitution. The powers of the British Parliament are absolute. Parliamentary supremacy implies two principles. First, Parliament has unlimited legal power to enact and amend any statutes and to override any decision of the courts. Secondly, none can question the authority of the parliament i.e., sovereign.

7. Limited Monarchy is another feature of the British Constitution. It means that the powers and authority of the sovereign are limited by the constitution. The monarch is bound by the Acts of parliament and by the conventions of the constitution.

8. The presence of a large number of conventions is another feature of the Constitution of England. There are conventions governing every branch of government. It is due to the presence of many conventions that we call the British Constitution an unwritten one.

9. Rule of law is important feature of the British Constitution. Rule of law means that law is supreme; no one is above law; law does not discriminate between individuals; all are equal before law; arbitrary arrests. detention and punishment are illegal. Rule of law guarantees a number of basic freedoms to the citizens.

10. Another notable feature of the British Constitution is to be found in the limited use of the principle of separation of powers when Montesqieu wrote his "Spirit of Law" he considered the English system as one based on separation of powers, the crown being the executive, the courts the judiciary and the parliament the legislature. But today the principle of separation of powers find only limited application in England; instead

Check Your Progress

1. Bring out the features of British Constiuttion.

of separation of powers, there is only fusion of powers between the three organs of the government.

These are the salient features of the British Constitution and they are ever-growing in the light of changes that occur from day-to-pay, both in national life and international relations.

COMPONENTS OF THE CONSTITUTION

A Constitution is a body of rules and practices which determine the structure and powers of government; in the United Kingdom such rules and practices are not to be found in a single document. They are to be found in a number of sources, written as well as unwritten. The following are the components of the Constitution of the United Kingdom.

2.4 HISTORIC DOCUMENTS - STATUS

Magna Carta or the Great Charter, the Petition of Rights and the Bill of Rights are three notable historic documents which have constitutional significance. Magna Carta was accepted by King John at Runnymede on January 15, 1215. The constitutional importance of Magna Carta is that it established the principle that the King cannot override the law. After Magna Carta Englishmen knew that they could have redress against wrongs, even thus done by the king. After King John's death it was reissued in 1217 and once again in 1225. In 1297, Magna Carta was placed on the statute books of England by Edward. To this day it remains a key part of the English Constitution. It was the first milestone in the struggle for liberty. Charles laws forced by events and by parliament to agree to the Petition of Rights in 1628. It prohibited arbitrary imprisonment and unparliamentary taxation. It also prohibited the use of martial law in peace time and lodging soldiers in non-military buildings. Immediately after the Bloodless Revolution of 1688, parliament wanted to consolidate its position and the result was the great constitutional document of British history, the Bill of Rights of 1689. It introduced no new principles of law. It confirmed the existing rights of parliament and the subjects. The powers of the king to suspend or dispense with laws, to levy taxes without the consent of the Parliament and to arise or to keep an army in times of peace were abolished by the Bill of Rights. "Freedom of speech and of proceedings in parliament, and the right of subjects to petition the king were resorted".

STATUTES

Certain important Acts of Parliament provide another source of Constitution. Let us roughly enumerate the Acts and statutes which contain the broad principles of the constitution. Statutes are used merely to translate conventions into law.

THE HABEAS CORPUS ACT OF 1679

This Act secured the personal liberty of the subjects. Though this right had been recognized much earlier, the ancient remedies were inadequate. This Act removed the defects.

THE ACT OF SETTLEMENT 1701

This Act united England and Scotland to form the United Kingdom of Great Britain and created a Parliament for United Kingdom.

THE REFORM ACTS OF 1832, 1867, 1884 AND 1885

The Reform Acts enlarged the basis of franchise and thus made the House of Commons a really popular chamber.

REPRESENTATION OF THE PEOPLE'S ACT OF 1918 AND 1928

These Acts established adult franchise for election to the House of Commons.

JUDICATURE CONSOLIDATION ACT 1925

This Act guaranteed the independence of judges.

THE PARLIAMENT ACTS OF 1911 AND 1949

These Acts have curtailed the powers of the House of Lords and made the commons the really supreme legislative body.

THE PARLIAMENT ACT 1918

This Act conferred suffrage to Women.

MINISTERS OF THE CROWN ACT 1937

Cabinet ministers were granted salaries by this Act.

Check Your Progress

2. Explain the sources of British Constitution.

THE STATUTE OF WESTMINSTER 1931

It established legal control over the Dominions.

The above list is not exhaustive and does not include all the statutes which contain the main principles of the English Constitution.

2.5 COMMON LAW - CASE LAW

Common Law is that part of the law which is traditional and is established by judgements of the courts. The fundamental freedoms enjoyed by the people are essentially common law rights. These freedoms are guaranteed by statutes like the Habeas Corpus Act of 1679. All rules of common law have not been legally defined. Some have been defined constitutional lawyers like Blackstone and by commentators like Walter Bagehot.

Whenever there is a dispute over the application of law to a particular case, the courts interpret that law. The judges can only interpret the texts of statutes enacted by parliament. When the meaning of an Act is ambiguous, the judge may apply certain principles to the new set of facts. Such decisions become accepted as part of the law of the land and are followed in subsequent cases. Many such rulings of the courts have been of constitutional significance. The following two example illustrate this point. In the 'Case of Parliament' (1611). Lord Chief Justice Cole gave a ruling that the prerogative of the king was limited by law the land and so the king cannot create any new offence by proclamation. As a result of Bushell's case (1670) immunity was given against legal action for words spoken by parties, counsel and witnesses in judicial proceedings.

2.6 LAW AND CUSTOMS OF PARLIAMENT

Apart of the Constitution are the privileges enjoyed by both Houses of Parliament. The freedom, security, dignity and independence of both House of Parliament are protected by these privileges. But the procedure followed by both the Houses is not law.

CONVENTIONS

Written rules cannot fully provide for the working of constitution. Written rules should be supplemented by unwritten rules known as 'conventions'. Conventions are practices regarded as legally binding. Conventions are essential for the development of existing institutions of government. Conventions are not uniform importance.

CONVENTIONS AND SANCTIONS

The importance of conventions in the English Constitution cannot be overemphasized. The important provisions regarding the actual working of the government are based on conventions in England. Conventions of the constitution "are rules or judicial decisions but they are created outside of these to regulate political conduct". (Herman Finer). What are called 'conventions of the constitution' by Dicey are referred to as 'unwritten maxims of the constitution' by J.S. Mill and the "customs of the constitution' by Anson. According to Jennings conventions provide the flesh which clothes the dry bones of law, they make the legal constitution work..... they keep it in touch with the growth of ideas".

Conventions are different from law. While law is enacted by the legislature, conventions are not. Moreover, law is enforced by courts. Law is static, but conventions keep on changing and cannot be forced by courts.

As regards conventions and common law, both of them are not enacted by legislature. But they differ from each other in that, while conventions are the outcome of the customs of the country, common law is the result of the decisions given by courts. Moreover common law can be enforced through a court; but it is not the case with the conventions.

IMPORTANT CONVENTIONS

There are some well established conventions relating to the monarch which regulate the exercise of royal prerogatives. The Monarch reigns, but does not govern. She is the titular head of the state and must act on the advice of her ministers. She should not attend the cabinet meetings, she must appoint the leader of the majority party in the House of Commons as Prime Minister and on his advice, other ministers are appointed and dismissed by her. The monarch has the power to veto a bill passed by the parliament, but she should not exercise that power.

There are important conventions relating to the Cabinet system. The Prime Minister must belong to the House of Commons and must be the leader of the majority party in that House, all ministers must belong to the party of the Prime Minister and they must be members of the Parliament; if a non-member is appointed minister, he or she must become member of Parliament within 6 months. All the ministers are collectively responsible to the House of Commons;

even if one minister is defeated in the lower House, the entire cabinet must resign. If a no confidence motion is passed by Common against the cabinet, the Prime Minister and the cabinet must quit office and the Prime Minister can recommend to the monarch the dissolution of the House and order fresh election. The monarch must accept this recommendation of the Prime Minister.

There are equally important conventions relating to Parliament. The Parliament must meet at least once in a year. When the House of Lords acts as the highest court only the 9 Law Lords sit as Judges, hear cases and give judgement. The speaker of the House of Commons becomes a non-party man on his election as presiding officer of the House and in the subsequent general election he is returned to the parliament unopposed and re-elected as speaker till he opts for retirement. A bill must be passed in the parliament after three readings. Every year the first session of the parliament is opened by the Queen with "Speech from the Throne". The Army Act is passed every year.

Lastly, there are some important conventions relating to the Commonwealth of Nations. In the case of Dominions the British Queen is also the Queen of the Dominions and she acts on the advice of the Dominion ministers. The British parliament should not make any law for a Dominion until so desired by the latter. The Governor General of Dominion is appointed by the Queen on the advice of the Dominion government. The membership of the commonwealth of Nations is optional.

SANCTION BEHIND THE CONVENTIONS

Constitutional conventions are not laws; they are not enforced by courts. Yet, they are scrupulously observed in Britain. What is the sanction behind them for such faithful observance?

According to some writers, the fear of impeachment was the reason for obeying the convention. In olden days fear of impeachment might have enforced obedience to conventions; but that is not the case in the modern days. No impeachment has taken place for the violation of the constitution for a pretty long time and it has become absolutely out of fashion. Hence, impeachment could not be considered to be the reason for obeying the conventions.

According to A.V. Dicey, conventions are obeyed because their breach would bring the offender into conflict with the courts and the law of the land. Suppose the parliament was not summoned at least once in a year, the result

would be that Army Act would expire and that the keeping of the army would become illegal; moreover if the parliament was not summoned annually no budget could be passed and the collection of taxes without parliament's authorization would be an offence. Therefore, those who violate the convention of annual parliament would find themselves in great difficulty. To avoid this, the convention of summoning parliament once in a year is faithfully obeyed. But Dicey's view is untenable because there would be no violation of the convention of the annual parliament if the parliament enacts Army Act of the budget for two years instead to for one year and does not meet for two years.

The real sanction behind the conventions, as Ogg says, is the force of public opinion. The public opinion demands that the convention must be obeyed. The public expects that a defeated ministry must resign and would not tolerate its continuance in office. Likewise, the public expects that the Queen should not use her veto power. This is the case with other conventions. If the rulers indulge in the violation of the conventions, the people would throw them out in the next election. It is this feat that compels the rulers to obey the conventions.

CONTROVERSY REGRDING THE EXISTENCE OF ENGLISH CONSTITUTION

There has been a controversy regarding the existence of the English constitution. Thomas Paine of America and Alexis de Tocqueville are the leading writers in this controversy. The two reacted strongly against Edmund Burke's view of the existence of prescriptive constitution in Britain. The main argument of Paine is that there exists no constitution at all unless it can be produced in the from of a document. He really amused the attendant of a London library by asking for a copy of the British constitution. In a spirited reply to Burke, he said that when none could present the constitution in a written or documentary from, "no such thing as constitution exists or did ever exist" in England.

A generation later, Alexis de Tocqueville repeated the argument of Paine. Like Paine he argued that the English constitution did not exist owing to the fact that there was no difference between the ordinary law and the constitutional law and that the parliament, by ordinary process, could change the constitutional law.

Check Your Progress

3. Explain the nature of Constitution.

That the views of these writers are misfound and that a thing like Constitution does exist in Britain becomes clear when we look at its component elements which are six in number. They are: 1. Great Charters like the Magna Carta of 1215, the Petition of Rights of 1628, the Bill of Rights of 1689 etc, 2. Important statutes passed by the Parliament such as the Act of Settlement of 1701, various Reform Acts etc, 3. Important judicial decisions, 4. Principles of Common Law, 5. Customs and Conventions and, 6. Standard text books and commentaries of jurists and scholars.

The English Constitution is not a piece of formal document; it is a complex amalgam of these six sources. Besides, the institutions and rules of the English constitution have developed not in a haphazard way, but in systematic process from time immemorial, long before the days of Paine and de Tocqueville. It is true that there is no constitution in Britain in the American of French sense, i.e. a formal written document embodying the nation's fundamental law. But the British people have a constitution according to their own definition of the term and the story of its development forms one of the most significant chapters in the history of free government. As Munro aptly puts, "It (the English constitution) is not one document, but hundreds of them . It is not a complete thing, but a process of growth. It is a child of wisdom and chance ....."

2.7 EXECUTIVE: MONARCHY

The Constitution of the United Kingdom has Parliamentary type of government. This type of government has two executive-nominal and real. The nominal executive will have no real powers and it exists in name only. The real executive will be the real repository of powers. It will exercise the powers in the name of the nominal executive. It is called parliamentary type of executive because the real executive is drawn from, responsible to, and is removable by Parliament. Cabinet system of government is another name by which it is known. The executive in England is still the king who is all powerful in theory and may legally be called the Head of the State. He is the nominal executive, but the real executive power is now exercised in his name by the Cabinet. The king as an individual, were the Crown, which adorns his head as the symbol of authority. But the Crown has now became a permanent institution as distinguished from its wearer-the king. And herein lies the chief feature of the British monarchy today; the king of England reigns, but does not govern.

2.8 THE 'CROWN' DISTINGUISHED FROM KING / QUEEN

One of the oldest governmental institutions in the United Kingdom is Monarchy. The Monarch may either be a King or Queen. Originally, the monarchy reigned by virtue of their military might. In course of time the authority of the monarch came to rest on common law. The prerogative powers of the monarch were transferred to the institution called the 'Crown'. (Prerogative powers were the original powers of the Monarch while he or she exercised at his or her own discretion). The Crown simply means King-in-Parliament or Queen and the two Houses of Parliament. The Crown is only in institution and not a living person. It is "a convenient working hypothesis". The Crown symbolizes the office and the Queen denotes the individual who occupies that office. A king or Queen may die; but Crown will not. This is reflected in the saying : The king is dead; long live the king;

2.9 THE POSITION OF THE MONARCH

The Monarch derives his position and powers from conventions and statutes. Though originally all powers vested with the Monarch by virtue of his office, what took place between 1688 and 1919 was the gradual transfer of political powers from the Monarch to Parliament. At present all aspects of Monarchy are governed either by conventions or by Acts of Parliament. The position and powers of the Monarchy is limited by the Constitution which is a collection or statues and conventions. Hence the monarchy is called a limited Monarchy.

An Act of Parliament (Bill of Rights, 1689) prescribes the conditions for succession to the throne. The notable conditions is that no Roman Catholic may become the monarch of the United Kingdom and that the monarch should not marry a Roman Catholic. The title and succession to the throne are determined by the Act of Settlement of 1701. Succession to the throne is vested in the House of Windsor. It is the rule of primogeniture which governs succession. According to this, the first born will have the right of succession. In the event of the first issue being a female, the male child will have precedence over the female. Provision has been made for Regency if the monarch is a minor. The Regent should be the next person in the line of succession to the throne and should be at least 21 years of age. During the absence of the monarch from the United Kingdom or when the Monarch is incapacitated due to illness, Counsellors of State may be appointed.

Representation of the People's Act of 1867, has stipulated the duration of Parliament. It is independent of the Monarch. It means that Parliament is not dissolved on the demise of the Sovereign. According to the Demise of the Crown Act, 1901, the holding of office under the Crown is unaffected by the death of the monarch.

Legally, this Monarch is the supreme head of state. All powers of state rest with the monarch. In reality, the powers of the Monarch are exercised by individuals and institutions in the name of the monarch. The Monarch cannot be held responsible for the exercise of such powers. The Sovereign is also the head of the Established Church. This is a traditional position. The Sovereign is the symbolic head of the Commonwealth.

2.10 POWERS AND PRIVILEGES OF THE MONARCH

The Monarch is above law and hence is not answerable to any court of law. He cannot be arrested and he cannot be judged. It is the Sovereign who is the law-giver and the dispenser of justice.

Formerly, Monarchs met all their expenses out of their feudal income. In course of time when this was found insufficient parliament sanctioned new taxes to support the King. Even this became insufficient. In 1630 it was decided to separate the expenses of the royal household from other expenses of the government. During the reign of William III (1690 – 1702) the income of the monarch came to be known as the 'civil list'. The civil list today includes the personal income of the Queen, the expenses of the royal household and the allowances made by Parliament to the members of the royal family. On the accession of the monarch, the civil list is considered by a Select Committee. The recommendations of this committee are incorporated in a statute. Other members of the royal family are also paid. The sums thus paid are charged directly on the Consolidated Fund and hence are not subject to annual review by Parliament.

The authority of the Monarch extends to all three branches of governments. The Queen is a part of parliament, all ministers are 'Her Majesty's and justice is administered by 'Her Majesty's Judges'. Originally, the powers of the Monarch were a part of the common law of the land. In course of time they came to be called as prerogatives. The prerogative was based, as Blackstone says "on that special pre-eminence which the King hath over and above all

persons, and out of the ordinary course of the common law, in right of his regal dignity" As a consequence of several attempts the Sovereign exercises her powers only on the advice of her ministers. Lord Usher's advice given in 1913 to King George V is worth quoting here. "The Sovereign cannot act unconstitutionally so long as he acts on the advice of a minister supported by the majority in the House of Commons. Ministerial responsibility is the safeguard of the monarch. Without it the throne could not stand for long amidst the gusts of political conflict and the storm of political passion". While exercising her powers the Queen should secure a written authority. Thus only a minister could be consulted and made responsible for the acts of the Sovereign. The following are the written instruments that are obtained by the monarch.

1. **Orders-in-Council:** These are made by and with the consent of the Privy Council. Applications for such orders are to be made by a minister to the Lord President of the Council. These orders are issued for changing the government of a colony or for convening a new parliament.

2. **Proclamations:** Declaration of war or peace, and the prorogation, dissolution and summoning of parliament are announced by proclamations.

3. **Letters Patent:** Authorisation for the opening of parliament, the conferment of judgeships and peerages and the assent to bills by Commissioners are covered by letters patent. Letters patent could be issued only under the authority of a Sign Manual Warrant which should be duly countersigned by minister.

4. **Sign Manual Warrants:** These warrants signify the Royal pleasures for particular proposals. The commissioning of an officer, the grant of charters to towns, instructions to the Governor of a colony, the commissioning of Counsellors of State to act during the absence or illness of the Monarch, and the appointment of certain officials are done through Sigh Manual Warrants. These warrants should be countersigned by responsible ministers.

The powers of the Monarch cover a wide range of activities of the government and the life of the nation. These powers may broadly be classified under the heads: executive, legislative, judicial, ceremonial, ecclesiastical, and miscellaneous.

Check Your Progress

4. Discuss the privileges of the Queen.

EXECUTIVE POWERS

Appointment of the Prime Minister, Minister and Officials

Being the chief executive it is the duty of the Sovereign to make a number of appointments. The foremost among those is the appointment of the prime minister. In the appointment of the prime minister the Sovereign is bound by conventions and is left with little personal choice. It is customary to appoint the leader of the majority party in the House of Commons, as the Prime Minister. In the event of the defeat of the government in the House of Commons or when the Prime Minister resigns, the monarch may send for the Leader of the Opposition. Under extra-ordinary circumstances, the Sovereign may consult any body before making the appointment. Usually the monarch consults his own Private Secretary who is the "eyes and ears of his sovereign".

There were days when ministers were personally chosen by the Sovereign and were responsible only to him. Since 1832 the responsibility for the selection of ministers (formation of a government) came to rest on the Prime Minister. But custom demands that the Prime Minister should submit the list of proposed appointments to the Sovereign and have discussion with him. The Sovereign cannot insist on any particular appointment. Though the selection of ministers is done by the Prime Minister, their appointments are made by the Sovereign. This, in reality, is only a formality.

All officers of government are officers of the Sovereign. Their appointments are made by the Sovereign. In practice, the Monarch has little to do in this matter. The actual selection and appointments are made by the Civil Service Board. But the action taken in this regard is taken in the name of the Sovereign.

The power of appointment is coupled with the power of dismissal. The Sovereign may dismiss a government from office. Dismissal of a government means dismissal of the Prime Minister. No such dismissal of a government has occurred since 1783. This power of the Sovereign is very vague. The Sovereign should exercise this power with utmost caution. He should see to it that his action receives the support of the electorate. Otherwise, that position of the Sovereign will be endangered. The civil servants serve during the pleasure of the Sovereign. This is only in theory. In practice, the civil servants remain in service so long they comply with their service rules.

Powers relating to the armed forces, war and peace and foreign relations

As the chief executive of the state, the Sovereign has military and diplomatic powers. The Queen is the Commander-in-Chief of the armed forces. Declaration of war and conclusion of peace are the powers of the Monarch. It is the Sovereign who makes the appointments of Ambassadors, High Commissioners, Consuls and other diplomatic personnel of the United Kingdom to other states. The Monarch conducts foreign relations, and concludes international agreements and treaties. In reality, these tasks are performed by the Prime Minister, the Foreign Secretary and the Foreign Office.

LEGISLATIVE POWERS

POWERS CONCERNING PARLIAMENT

It is the Queen who summons, prorogues and dissolves Parliament. But in this respect she cannot act without proper advice. Advice in this respect is tendered to the Queen by the Prime Minister. Every new Parliament is convened at the beginning of a new year commences the work with a Speech from the Throne. The speech which is delivered by the Queen in the House of Lords in the presence of Lords and Commons is prepared by the Prime Minister.

Though the Prime Minister tenders advice to the Queen regarding dissolution of Parliament, the Queen can refuse dissolution on any one of the three grounds. They are (1) the existing Parliament is still vital and capable of doing its job; (2) general election would be detrimental to the economy of the nation; and (3) she could find another Prime Minister who could carry on the government for a reasonable period of time with a working majority in the House of commons.

ASSENT TO THE BILLS

The bills that are passed by Parliament should receive the assent of the Queen to become laws. Giving assent to bills is automatic today. The Queen may give her assent in person or she may authorise certain commissioners to declare and notify her assent.

A Monarch could veto legislation passed by Parliament. In practice, no Monarch would do it. The power of veto was last used by Queen Anne (1702-1714).

CREATION OF PEERS

Hereditary and life peers are created by the Sovereign. Peerages are created by the Sovereign on the advice of the Prime Minister. Peers are created for anyone of four reasons. First, to reward or honour persons for public service. Second, to give a particular political party more representation in the House of Lords. Third, to permit persons with special qualifications to participate in the deliberations of the House of Lords. Fourth, to resolve deadlocks between the two Houses Parliament. The last one is or constitutional significance. Queen Anne used this power in 1711 to create 12 Tory peers to enable its passage of the Treaty of Utrecht in the House of Lords. A threat of using this power was made in 1832 and again in 1911 to make the House of Lords give way to the wishes of the Commons.

JUDICIAL POWERS

The queen is the fountain of justice. The judges are appointed by her and judgement are pronounced in the name of the Queen. The Queen has the power of pardon. This power is exercised by her on the advice of the Home Secretary. The personal views of the Sovereign in this are not usually taken into account.

CEREMONIAL POWERS

The Queen is the fountain of honour. The Sovereign, on the advice of the Prime Minister, confers honours and titles on individuals. The Prime Minister, before making his recommendations would usually seek the views of the Leader of the Opposition. The Sovereign too may suggest a name. Names of persons selected for political service are scrutinized by a committee of three Privy Councillors who are not members of the government. This scrutiny is done so s the eliminate any sale of honours. Certain honours are conferred by the Sovereign herself. They are: the Order of the Garter, the Order of Merit, and the Royal Victorian Order.

ECCLESIASTICAL POWERS

The Sovereign is the head of the Established Church. She makes the appointments of the Archbishops, Bishops, Deacons and Canons. As is the case with other appointments, in this also the prime Minister tenders advice to the Queen.

Check Your Progress

5. What are the Legislative powers of Queen?.

MISCELLANEOUS POWERS

It would very much surprise people if they would only told how many things the Queen could do without consulting Parliament, says Walter Begehot in 'The English Constitution'. The creation of corporations and the appointment of members of Royal Commissions are powers possessed by the Queen. These powers too re exercised by the Queen on the advice of a responsible minister.

FUNCTIONS AND SERVICES OF THE MONARCH

Most of the prerogative powers of the Sovereign have now been taken away, even those powers that are still left in the hands of the Sovereign are to be exercised on the responsibility of a minister. The decrease in the prerogative powers of the monarch had not reduced the role of the monarch in the constitution. The Sovereign is stronger today than ever. "Not withstanding the fact that the crown has lost its original great powers, it can be said certainly of the present century that as those powers passed and the monarch becomes strictly constitutional the monarch has become increasingly popular in the hears and minds of the British people', (Lord Morrison in his "Government of parliament") The following are the functions still performed by the Sovereign.

An occasion may arise when the Queen will be called upon to form a government on her own initiative. On such an occasion, she will consult the out-going Prime Minister, but his advice cannot be binding. The final decision is that of the monarch alone. The Queen should take care that there is no political bias in her decision. In all other matters the Queen acts on the advice of a responsible minister, usually the Prime Minister.

Though the Queen is expected to act only on the advice of ministers, she need not give automatic approval to the decision of ministers. The sovereign, according to Walter Bagehot, has three rights. They are : "the right to be the consulted, the right to encourage, and the right to warn. These three rights are more than enough for a Sovereign of great sense and sagacity". When the Prime Minister wants the Queen to exercise her prerogative powers he must give reasons for that. The Queen should be consulted on all aspects of governmental policy.

When the Queen is consulted she gets an opportunity to express her opinions. The Queen's exalted position has many advantages and her advice may have particular value. Her reign may have extended over a number of

governments. Queen Elizabeth II has had more than ten Prime Ministers. "The transistor nature of governments is counter-balanced by the continuity of the Sovereign". Ministers may come and go but the king remains always at the centre of public affairs, always participating vigilantly in the work of government from a standpoint detached from any consideration, but the welfare of his people as a whole. He is the continuous element in the constitution, one of the main safeguards of it democratic character and the repository of knowledge of affairs. The king could, by virtue of his long experience, prevent a minister from implementing a bad measure. In 1956 the Queen advised her Prime Minister, Antony Eden, against invasion of the Suez. The advice was not heeded, and the after-effects were unpleasant for the Prime Minister, and his government.

Because of her exalted position the Queen receives information from a number of sources. She studies cabinet papers and foreign office dispatches. The agenda of the cabinet and memoranda regarding policy of particular departments are seen by the Queen in advance. When Parliament is in session the Prime Minister meets the Queen once in a week. The Queen is always in close touch with the Prime Minister, the Foreign Secretary and the Minister of Commonwealth Affairs. Communications from members of the Commonwealth come direct to the Queen. Governors-Generals of Dominions and British Ambassadors and High Commissioners maintain personal contact with the Queen; she receives foreign envoys accredited to the United Kingdom. She presided over the meeting of the Privy Council. The Queen gets information by her contacts with a number of high ranking officials. This information is invaluable for her in advising her ministers.

The non-partisanship of the Queen adds weight to her views. She has no political axe to grind. She is neither a politician nor is controlled by politicians. As Sir Ivor Jennings says, she is "the nearest approach to the ordinary man provided by the British constitutional machine".

Once a decision has been taken by the minister, either after having accepted or rejected the advice of the Sovereign, the Queen must" support the government with a majority in the House of Commons frankly, honorably and with all her might". To quote Mr. Asquith again, "in the last resort the occupant of the throne accepts and acts on the advice of his ministers. He is entitled and bound to give his ministers all relevant information which comes to him; to point

Check Your Progress

6. Describe the functions of Queen.

out objections which seem to him valid against the course which they advise, to suggest (if he thins fit) an alternative policy. Such intimation are received by ministers with due respect. But, in the end the sovereign always acts upon the advice which ministers after (if need be) reconsideration feel it their duty to offer. They give that advice well knowing that they can, and probably will be called upon to account for it by Parliament".

The Constitution of the United Kingdom operates through party politics. One party may not always emerge victorious in the polls. Sometimes no one party may have absolute majority. In a crisis it may be necessary to moderate differences. Under these circumstances, the queen who is above party politics may appeal to party leaders to co-operate. It was mainly due to the efforts taken by King George that the coalition government was formed in 1913. Compromise on the question of Home Rule for Ireland was reached in 1914 mainly due to the efforts taken by King George V. The prestige of the Sovereign evokes special response. It is because of this that at the outbreak of war, appeals to enlist in the armed forces are made in the name of the Sovereign.

The Head of State of the United Kingdom is held in high esteem abroad. The Queen could influence international relations through her personal contacts with heads of state of other nations. Edward VII's official visit to Paris in 1903 resulted in Entente Cordial between France and Britain. The help rendered by the United States to Britain before her entry into World War It was mainly due to the personal friendship between King George VI and President Roosevelt. Before taking an active part in international affairs the Sovereign should get the consent of the Prime Minister.

The Queen has a number of ceremonial duties to perform. In fulfilling her ceremonial duties the Queen lends dignity and interest to government. Opening of Parliament, receiving and entertaining heads of states and performing a variety of official duties both at home and abroad are some of the ceremonial duties of Queen. On ceremonial occasions, the Queen stands above party politics. It looks dignified and glamorous. Even to-day the state is personified in the minds of the common man by the Sovereign. This sentiment is expressed in the National Anthem. By her hereditary position and by the

ancient origin of her ceremonial duties the Queen symbolizes the continuity of the state.

"As the head of state and leading example in its religious, moral and family life, the Queen unites the nation". The Queen is a mystical emblem uniting the nation. As Dermot Morrah says, "She is the embodiment of their (people's) tradition and their future, the focus of their aspirations, the symbol of their universal representative".

As the Head of the Commonwealth Queen symbolizes the unity of the member nations in the Commonwealth.

2.11 NEED FOR MONARCHY

Though most of the powers of the Sovereign have been transferred to others, the need for a Sovereign is still there. All states require someone at the apex of affairs. The British Sovereign is the head of state. She performs a number of functions similar to the Presidents of the United States and India. Some are of the view the monarchy is an anachronism in this age of democracy. But the Monarchy in the United Kingdom has its uses and values.

The Monarchy, being hereditary, provides continuity. Since there re no elections to fill the throne, political bargaining and wasteful expenditure are avoided. Monarchy is not very expensive. Only a fraction of the national income is spent for the maintenance of this institution.

As the Sovereign is free from political connections, she is impartial. This is the reason why the Queen is regarded as the symbolic head of state and of the Commonwealth. The amount of popular support and acclaim received by the Queen is not received even by the US President.

Another reason for the retention of Monarchy in the United Kingdom is the conservative temperament of the people. The English are deep rooted in conservatism; they cannot even think of a constitution without their beloved Sovereign. Finally, since the Sovereign can do no wrong, and cannot act against her people, she can very well be retained. Monarchy is a harmless but useful institution in England.

SUMMARY

In this unit the growth of the constitution in England is traced. The different laws which helped the growth of constitution has been discussed. The special feature of English constitution, conventions are analysed. This unit haws brought out the characteristic features of British constitution, which helps the well understanding of U.K. This unit explains the theory and practice of British Government. The powers of Monarchy is discussed. King is ab ove politics. The distinction between king and crown is another important feature of discussion. Why monarchy is retained in Britain is another fact.

KEY WORDS

Bloodless Revolution - Magna Carta - Statutes - Conventions - Letters Patent - Sign Manual Warrants - Peer - Extra Constitutional - King and Crown.

ANSWER TO CHECK YOUR PROGRESS

For Question No 1	Refer Section 2.1
For Question No 2	Refer Section 2.4
For Question No 3	Refer Section 2.6
For Question No 4	Refer Section 2.10
For Question No 5	Refer Section 2.10
For Question No 6	Refer Section 2.10

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MODEL QUESTIONS

1. Discuss the main features of British Constitution.
2. Examine the powers and the position of the British Queen.
3. Account for the survival of monarchy in England.

UNIT - 3

CABINET – PRIME MINISTER - LEGISLATURE

INTRODUCTION

Privy Council was existence during Norman times. This council was helping the king. It slowly grew into cabinet in course of time. At present the cabinet and Prime Minister play an important role. The Cabinet is the most powerful body in England. The King appoints Prime Minister, who is the leader of the majority party. Robert Walpole was the first Prime Minister. In 1937 legally the office of Prime Minister emerged. British Prime Minister is enjoying enormous powers.British Parliament has set an example of working of Parliamentary Democracy, even though monarchy is in existence. The sovereignty of British Parliament has grown steadily. There are three important historic events which has helped the growth of sovereignty of Parliament. In the year 1648 Charles I was questioned by the Parliament and executed. The second incident was the glorious revolution of 1688. In the year 1701 Parliament decided the heir to the king, thus took the powers of the monarch. The functions and powers both the Houses of Parliament is discussed in this unit.

OBJECTIVES

1. To know about the position and powers of British Prime Minister.
2. To examine whether there is any chance of cabinet becoming dictator.
3. Is really the British Prime Minister occupies a unique position?
4. The powers and functions of House of Lords second chamber is studied.
5. The role of House of commons in the process of Law – making is learnt.
6. The Committees play an important role in the legislation in U.K.

STRUCTURE

Cabinet

The Privy Council

3.1 CABINET

The real executive in the United Kingdom is the Cabinet whose head is the Prime Minister. "The Cabinet is the core of the British constitutional system. It is the supreme directing authority. It integrates what would otherwise be a heterogeneous collection of authorities exercising a variety of functions. It provides unity to the British system of government". (Sir Ivor Jennings – Cabinet Government). Before proceeding with out examination of the Cabinet we should examine the evolution of the present day cabinet. For this we have to go back to the days to the Privy Council.

3.2 THE PRIVY COUNCIL

The Cabinet had its beginnings in the Privy Council, the medieval periodically consulted the Great Council, Magnum Concilium, on important matters of state. When the volume of the business of state increased, the king found the Great Council an unwidely both for consultations. So he appointed a smaller Council. This Council contained leading officials like the Justiciar, the Lord Chancellor, the Lord Treasurer, the Lord Keeper of the Council which

was originally known as the Curia Regis and it developed into the Privy Council. The primary task of the Privy Council was to tender advice to the king when sought for. The Tudors assigned it executive, legislative and judicial functions.

At present the Privy Council consists of about 300 persons. All Cabinet Ministers, past and present, the Archbishop of Canterbury, the Speaker of the House of Commons, the Lords of Appeal, the Lord Chief Justice, retired High Court Judges, high-ranking ambassadors and other prominent people are members of the Privy Council. The whole Council meets only when the Sovereign dies or when the announces his decision to marry. The normal business of the Council is transacted by four to six members who meet in the Queen's presence.

3.3 DEVELOPMENT OF THE CABINET

During the reign of Edward VI, one of the committees of the Privy Council was entrusted with the transaction of important business, and was therefore, called the Committee of State. During the 17th Century, the Privy Council failed to be an effective advisory body. This was mainly due to the phenomenal increases in the membership of the Council. Hence, monarch like James I and Charles I began to seek advice from a small body or from a single person. Charles II created in 1667 a body of trusted counselors called the 'Cabal' for consultation and advice. The name 'Cabal' was derived from the first letters of the names of the five advisers namely, Clifford, Arlington, Buckingham, Ashley and Lauderdale. This committee was later known as the cabinet because it met in the king's closet. Except in its name, it had no resemblance to the modern cabinet. The cabinet in those days was very unpopular with the people.

The principle of ministerial responsibility was accepted from 1688. But there was no collective responsibility because the ministers were chosen from among major parties of Parliament. The cabinet provided a House divided against itself. It could not give unanimous advice. So from 1697 the ministers were chosen from the among major parties of Parliament. The cabinet provided a House divided against itself. It could not give unanimous advice. So from 1697 the ministry formed on the principle that the ministers should possess the confidence of the majority party in Parliament. Queen Anne followed this precedent during her reign.

Circumstances favoured the growth of the cabinet as a body independent of the king. With the accession of George I, an important change took place in the composition and working of the cabinet. George I neither spoke nor understood the English language. Therefore, he did not attend the cabinet meetings. He delegated his functions to one of his ministers. As a consequence, the personal influence of the king in the affairs of the state diminished. His place was taken up by Sir Robert Walpole who can be regarded as the first Prime Minister though not the modern sense of the term. He was also the leader of the House of Commons. George II followed the footsteps of George I. He allowed Sir Robert Walpole to govern the realm. It was during the reign of George II that the cabinet system was definitely worked out and established under Sir Robert Walpole. He demanded and enforced the support of his party to the ministry. Thus, the development of the cabinet and the party system were side by side. The one assisted the other. But in 1742 Walpole resigned on being defeated in the House of Commons. George III disliked the Cabinet and tried to destroy it with the help of Tories. After the disastrous loss of the American colonies his personal government disappeared and the Tory party under Pitt became as loyal to the cabinet and party system as the whigs.

The Reform Act on 1832 dealt the final blow the power of the king. Thereafter the Cabinet became the instrument through which the people could control the Government. Queen Victoria accepted the cabinet system and a number of conventions concerning the cabinet were evolved.

The Cabinet is the "keystone of political arch". It is the "pivot around which the whole political machinery revolves". Ramsay Muir calls it "the steering wheel of the ship of the state". Harold Laski defines the cabinet as a committee of the party or coalition of parties which can command a majority in the House of Commons. Until 1937 when the Ministers of the Crown Act was passed the term Cabinet was unknown to law. Many of the rules pertaining to the Cabinet are based on conventions.

DISTINCTION BETWEEN 'MINISTRY' AND 'CABINET'

The Cabinet is smaller than the ministry. A ministry may contain about one hundred members. But a Cabinet will only have about twenty members. All the crown officials who are members of the House of Commons and are responsible to the House of Commons are members of the ministry. All members

of the Cabinet are ministers, but all ministers are not members of the Cabinet. The Cabinet may include members from the House of Lords too. The ministry does not meet as a body to transact business. It does not formulate policy. A non-cabinet minister is only the head of a department of Government. A Cabinet Minister, on the other hand, being the head of a department of Government, has also a share in formulating the policy of Government.

3.4 FUNCTIONS OF CABINET - MINISTRIAL RESPONSIBILITY

1. Cabinet Government is party government. The policies that are implemented by the Cabinet are formulated by the party. The policies thus formulated will reflect the philosophy or ideology of the party. But a party cannot bind a Government to implement all its policies.

2. It is the function of the Cabinet to fill in details of the policy. While implementing a particular policy a number of requirements may have to be taken into account. Prevailing conditions in the state, availability of finance, co-ordination between various departments etc., should be taken into account before implementing a particular policy. This is the task of Cabinet.

3. The Cabinet co-ordinates the policies of different departments. The implementation of even a minor measure requires co-ordinate of various departments of government. It is easy for the cabinet to achieve this because its members are heads of various departments of government.

4. Apart from its regular work connected with legislation, economy, and administration, the cabinet may frequently be called upon to take urgent and major decisions in matters related to foreign affairs. Certain matters may reach the attention of the cabinet by being raised by the press or by being the subject of embarrassing questions in Parliament.

5. It is the work of the Cabinet to formulate plans for the future. The responsibility of a Government does not end with the fulfillment of immediate tasks. It should plan for the future too. It is possible that a particular plan formulated by one Cabinet may be shelved or modified by a subsequent one.

Ministerial responsibility is the first and the foremost principle of Cabinet system of government. Every minister has an individual responsibility to the king, to his colleagues and to the House of Commons. The Cabinet Minister in particular has a two-fold responsibility individual and collective.

Check Your Progress

1. Trace the Development of Cabinet.

A minister's responsibility to the king is a historical and technical one, the king cannot dismiss a minister. Yet, the responsibility has a meaning in this that the king has a right to be informed about ministerial action done in his name. Any imprudent act of a minister may subject the whole ministry to attack from Parliament. Then comes the most important of the ministerial responsibilities to the House of Commons. Ministerial responsibility to Parliament has two aspects the collective responsibility of ministers for the policies and actions of the government and then individual responsibility for the work of their department over which they preside i.e., a minister in charge of a department is answerable for all its acts and omissions and must bear the consequences of any defect of administration. Both forms of responsibility are embodied in conventions developed during the 19th Century.

Collective responsibility is Britain's principal contribution to modern political practice. Implicit in the doctrine of collective responsibility is the unity of the government; collective responsibility rests on the idea of the cabinet solidarity of standing or falling together. This does not mean that no minister ever leaves the Cabinet alone. Collective responsibility applies to all ministers alike from senior Cabinet ministers to junior ministers and one who is not prepared to defend the Cabinet decision must resign. Peel resigned because he did not agree with and support Disreali's Reform Bill. Anthony Eden resigned in 1938 because he was unable to agree with the foreign policy adopted by Neville Chamberlain.

The duty of a minister is not merely to support the government, but also to refrain from making any speech critical of the cabinet policy. The Prime Minister can advise the king to dismiss a minister for official indiscretion or for misconduct. In 1922 Edwin Montague, Secretary of State for India, was dismissed for making public a confidential state paper. In 1947 Dr. Hugh Dalton, Chancellor of the exchequer, had to quit from the ministry for indirect remarks about the budget.The Cabinet is thus, by its nature, a united body and collective responsibility is the method by which this unity is secured.

A.M. Birch, however, is of the opinion that while the doctrine of collective responsibility remains unchanged, its practical importance has been greatly reduced with the diminution of parliamentary power as a result of the growth of party discipline. He concludes that the doctrine of collective

responsibility does not occupy the place in the present political system that is commonly claimed for it.

WAYS OF ENFORCING MINISTERIAL RESPONSIBILITY

There are five ways of enforcing this responsibility: (1) by questioning the ministers in such a way as to put the ministers on the defensive; (2) by passing a vote of no confidence, expressing disapproval of a general policy; (3) by a vote of censure for some specific act; (4) by defeating a prestigious measure sponsored by the cabinet and (5) by passing a measure or amending it in such a way as to make it unacceptable to the cabinet.

When any of the above measures except the first is taken in the House of Commons, the Prime minister and his cabinet must either resign or appeal to the country by means of a general election. If they lose the support of the electorate they must resign. A minister is answerable for his actions not only to the House of Commons, but also to the courts of law if they are alleged to be illegal.

IMPORTANCE OF THE CABINET

The most important institution of the Government in the United Kingdom today is the Cabinet. That is called the real executive. The Cabinet gives coherence to the constitution. It provides harmony between the legislature and the executive. It also provides leadership to the legislature. Cabinet is an executive body which derives its authority from the legislature. "A Cabinet is a combining committee a hyphen which joins, a buckle which fastens the legislative part of the state to the executive part of the state. In its origin it belongs to the one, in its function ft belongs to the other" (Walter Bagehot).

3.5 DICTATORSHIP OF THE CABINET

Though in theory the cabinet is responsible to and removable by Parliament in practice it is the Cabinet which guides and control the Parliament. This is primarily due to party politics. In practice the cabinet is not subject to the sovereignty of parliament. A powerful weapon in the armoury of the Cabinet is the 'threat of dissolution'. The Cabinet can, at anytime, ask for the dissolution of Parliament. Since no member of Parliament wants to lose his seat, members will not force the Cabinet to ask for the dissolution. The increase in the importance and authority of the Cabinet is due to another factor also. Most of the measures are introduced in parliament by members of the Cabinet. An

Check Your Progress

2. Discuss the Ministrial Responsibility.

ordinary member of the House is perplexed by the mass details and technicalities of a measure. Hence, he looks to the Cabinet for guidance. This places the Cabinet in an advantageous position. The Cabinet has virtual control over legislation. Alffinancial proposals are made by the cabinet. Since the agenda of Parliament is prepared by the cabinet, it could limit the time on debates. Delegated legislation has further increased the powers of the Cabinet. Due to the increase of ministers, over a hundred seats in the House of commons are occupied by ministers. In the Cabinet itself the dominant position is held by the Prime minister. He is the actual ruler. He is the leader of the legislature as well as the Government.

3.6 THE PRIME MINISTER - DEVELOPMENT OF THE OFFICE

If the Cabinet is the steering wheel, the steerman is the prime minister. Lord Morely described him as "the key-stone of the cabinet arch". He is the head of the Cabinet or the Ministry, the leader of the House of Commons and the channel of communication between the King and the Cabinet. As long as he enjoys the majority in the House of Commons, he wields all the powers of Parliament and the crown. Yet, "nowhere in the wide world" said W.E. Gladstone, in his "Gleaning of past years" does so great a substance cast so small a shadow; nowhere is there a man who has so much power, with so little to show for it in the way of formal title or prerogative". The Prime minister is, undoubtedly, the real authority in Government. So powerful an office is of recent origin.

When George I stopped attending and presiding over meetings of the Cabinet it became necessary for one member to take the place of the King. The person who presided over the meetings of the Cabinet during the eighteenth century was not a Prime Minister in the modern sense of the term. His position depended on the king and not on the electorate. Even Walpole (who is regarded as the first Prime Minister) did not perform the functions or enjoy the position of a modern Prime minister. The modern Prime "minister is essentially a product of the Reform Act of 1832. The first Prime minister, in the modern sense of the term, was Sir Robert Peel (1834).

3.7 FUNCTIONS OF THE PRIME MINISTER

The position of the Prime minister is based not on law, but mainly on conventions. It was the Chequers Estate Act of 1917 which first mentio

Prime minister in a law. With the passing of the Minister's of the Crown Act in 1937, official recognition was given to the Prime minister. This Act gives him a salary and a pension. This Act did not mention anything about the powers of the Prime minister. The Prime minister performs the following functions.

1. The Prime minister is the leader of his political party both inside and outside Parliament. It is only as a leader of the majority party than an individual becomes the Prime minister. The Prime minister must preserve his party as a whole. He should be in constant touch with opinion and should make suitable modifications in the policy when needed. The party cannot afford to disregard the Prime minister.

2. It is the responsibility of the Prime minister to form a Government. All ministers are appointed by the Queen on the advice of the Prime minister. Much care must be taken by the Prime minister while selecting ministers. This is the hardest task. Important posts are usually given to leading and experienced members of the party. In filling the minor posts, the cabinet minister concerned and the chief whip of the party are consulted by the Prime Minister. While selecting ministers, the Prime minister should take into account the following.

a) No law requires a minister to be a member of Parliament. But convention states otherwise. If an individual is not a member of Parliament at the time of his appointment as minister, he should become member within six months, Either he could be elected to the House of Commons or made a peer.

b) The Ministers of the Crown Act of 1937 indirectly suggests that there should be some ministers from the House of Lords. This Acts limits the number of ministers and Parliamentary Secretaries who can sit in the House of Commons to ninety one. This means that the Prime Minister should see to it that his ministers are drawn from both Houses of Parliament.

c) When a Cabinet minister is from the House of Lords, his subordinate ministers should be from the Houses of Commons.

d) The posts of Chancellor of the Exchequer, Minister of Labour, Home Secretary, President of the Board of Trade, Minister of Education, and

Minister of Health are usually filled by members of the House of Commons.

e) The Lord Chancellor, the Attorney-General and the Solicitor General should be lawyers.

f) Members of the ministry must belong to same political party. (This will not be possible in a coalition ministry)

g) The Prime Minister should include in the Cabinet leading and experienced members of the party. He should give representation in the ministry to different wings of the party.

h) Young members of the party must also be given places in the ministry.

i) The views of the Sovereign should also be given due consideration,

j) The ministers should have competence and honesty.

Above all, the Prime Minister should get a team of really able and honest men who would work under his leadership.

3. According to circumstances, the Prime Minister-may dismiss ministers as for as possible, the Prime Minister would only invite resignations. Dropping a minister from the ministry will usually be for a Cabinet reshufle or to make way for younger men. The ministers who resign at the request of the Prime Minister are usually given peerages When a minister indulges in embarrassing acts he may be asked to resign. Dismissal of a leading member of the party may lead to a split in the party. So, in dismissing a minister the Prime Minister should be very careful.

4. It is the Prime Minister who selects the Cabinet. Sixteen to twenty four members are usually found in a Cabinet. Officers like those of the Chancellor of the Exchequer. Foreign Secretary, Home Secretary, Minister of Defence. President of the Board of Trade, Minister of Labour, Secretary for Commonwealth Affairs, Secretary for Scotland, Lord President of the Council, Lord Privy Seal and Lord Chancellor are of Cabinet rank. The Prime Minister should be very careful in his selection of Cabinet Ministers. Important colleagues of the Prime Minister are usually given key posts. Members of the Cabinet in addition to their possessing administrative ability should be able to work

Check Your Progress

3. Discuss the function of Prime Minister.

together. It is the task of the Prime Minister to mould individual ministers into a team under his leadership. This depends upon his personality, his powers of leadership and the accuracy of his judgement of individuals. L.S. Amery says, 'few dictators indeed enjoy such a measure of autocratic power as enjoyed by the British Prime Minister while in the process of making up his Cabinet'.

5. The Prime Minister is the chairman of the Cabinet. He is not a chairman in the ordinary sense of the term because of the following reasons : First, it is he who selects the members of the Cabinet. He was not selected by them. Before the commencement of a meeting of the cabinet, the Ministers should wait till invited inside the cabinet room. Secondly, the Prime Minister chooses the items on the agenda and decides the order in which they should be taken up for consideration. Thirdly, the views of the Prime Minister dominate the decisions of the Cabinet.

6. The Prime Minister directs and co-ordinates policy. The general policy to be pursued is formulated by the executive. The interpretation and actual implementation of this policy is left with the Prime Minister. For this purpose he exercises an overall supervision over the various departments of government.

7. The leader of the House of Commons is the Prime Minister. Until recently the Prime Minister was the official leader of the House of Commons. But now this work is performed by a minister who is the leader of the House. The Prime Minister is, as the leader of his party, responsible for managing his majority and for finishing government business in time. Whenever the House wishes to express its views on national issues over party divisions, it is the Prime Minister who acts as the spokesman of the House. On such occasion the Leader of the Opposition underlines the unity of the House.

8. The Prime Minister is the link between the Government and the Sovereign. The Sovereign has the constitutional right to be informed and consulted on matters of Government. Once in a week the Prime Minister meets the Queen; on matters like the constitutional implications of marriage proposal, changes in names of the Royal title, invitations to visit Commonwealth and foreign countries, it is the Prime Minister who acts as the personal adviser to the Sovereign and the Royal family.

9. The Prime Minister is the repository of patronage. This is because of the fact that a number of prerogative powers originally held by the Sovereign have now passed into the Prime Minister. Appointment of public officials are made by the Sovereign on the advice of the Prime Minister. It is the Prime Minister who recommends for the award of titles or honour.

10. The Prime Minister maintains contact with Commonwealth Prime Ministers and Heads of other governments. This is important for setting international disputes and for maintaining friendly international relations.

IMPORTANCE OF THE PRIME MINISTER

The Prime Minister is the outstanding figure in the British Constitution. His duties and powers are limited only by his personality and by the support he enjoys from his party. He is the choice of the electorate. He can appeal to the electorate at any time for confirmation of his position. Members of the government are more or less subservient to him. He has a major share in determining the policy of the government. His leadership in the House of Commons and his frequent contacts with the Sovereign give him prominence.

There has been a tendency for an increase in powers of the Prime Minister. The increase in the authority of the Prime Minister is due to many reasons.

Acceptance of the Prime Minister as the leader by the important members and by rank and file of the party is an important factor. The Prime Minister exercises a good deal of patronage. He appoints all the ministers. All the high ecclesiastical officers are appointed on his advice. The king confers peerages and other honours on his recommendation. Ministers who cannot get along with the Prime Minister may either be dismissed or asked to resign. He has the all-important weapon, viz the threat of dissolution of Parliament. This has prompted writers like Christopher Hollis to observe that England has Cabinet Government instead of Parliamentary Government. All initiative in regard to legislation is of course with the Cabinet, and the combination of the executive and legislative powers has naturally led to Cabinet despotism. The Cabinet office and Cabinet Committees have expanded the authority of the Prime Minister. The Cabinet office functions under the direction of the Prime Minister. He is a member of all important Cabinet Committees.

The increasing importance of the Prime Minister is also due to recent development in science and international affairs. Radio and television bring him into the homes of the people. Periodic summit meetings have enabled the Prime Minister to take a leading role in foreign policy.

Few, if any, positions in the world carry with them greater power than the British Prime Ministership. But this does not mean that all Prime Minister have been equally powerful. The office as former Prime Minister Mr. Asquith remarked, is what its holder chooses to make it. Much depends upon the character and personality of the Prime Minister himself. With the full support of his party "a Prime Minister wields an authority that a Roman Emperor might envy or a modern dictator strive in vain to emulate" (Sir Ivor Jennings).

A critical study of the office of the Prime Minister shows that he enjoys a lot of power, prestige and is a source of high patronage. Yet, there are some serious limitation upon the use of his power and position. He cannot act in an arbitrary manner. Especially, a Labour Prime Minister cannot disregard the conflicting views of equally strong wings of trade unions. So, he must necessarily adopt the glory of the golden mean to face the rifts within the party. Further, as the leader of a party that has to face the future elections, he cannot, as an individual dictator, adopt unpopular measures. Under the biparty system the government enjoys only a narrow majority and cross voting is not entirely uncommon. This also renders the Prime Minister's position somewhat vulnerable. But one must take into account the fact that the British Prime Minister, acting as the leader of the popular House, enjoying legislative supremacy under an unwritten Constitution, possess enviable combination of legislative and executive powers.

3.8 LEGISLATURE - HOUSE OF LORDS

The Legislature in Britain is the Parliament. It consists of the Sovereign, the House of Commons and the House of Lords. The House of Lords is the Upper Chamber and the House of Commons is the Lower Chamber. In the past, the House of Lords enjoyed more powers and prestige than the House of Commons. Over the years, the House of Lords has lost much of its powers. Yet, it still remains a part of the Constitution.

By the middle of the thirteenth century, the Magnum Concilium of the Normans developed into a Parliament. This Parliament represented the three classes of the nation, viz., barons, clergy and commons. Later, this Parliament was divided into two Houses in the fourteenth century. In those days it meant the meetings of lay and ecclesiastical peers. Towards the close of the fourteenth century the House of Lords began a gradual surrender of its authority to the House of Commons. By 1395 the House of Commons became the sole originator of taxation. Under the Stuarts the House of Lords became important. It supported the king in most of the issues. After the execution of Charles I, the House of Lords was abolished as it was held useless and dangerous. With the restoration of monarchy in 1660, the House of Lords again appeared on the scene. Thereafter, both Houses started having an equal part in law making. From the later part of the seventeenth century, the House of Commons began to assert its importance. The gulf between the two Houses widened during the nineteenth century. By and by the House of Lords came to possess a subsidiary position in the constitution. Today, this House is far inferior to the House of Commons.

COMPOSITION

The House of Lords is an anachronism. Its composition is utterly undemocratic. Neumann says, "among the many quaint and ancient institutions which exist in the U.K. the House of Lords is one of the most archaic. Its nature, role and composition are unique in comparison with the second chambers of other countries".

The House of Lords consists of many categories. First, there are hereditary peers and peeresses of England (around 700) above the age of 21. Second, there are princes of the Royal blood who usually take no part in its proceedings. Third, there are Scottish peers. Fourth, there are life peers and peeresses created under the provisions of the Life Peerage Act of 1958. Fifth, there are 26 spiritual peers. Sixth, there are 24 Lords of Appeal including 9 Law Lords. The Crown, on the recommendation of the Prime Minister, has the prerogative making new peers with the object of honouring men of distinction in literature, science, arts, politics, defence services, diplomacy etc.

Those who are below 21 years of age, aliens, bankrupts and those who are convicted of felony or reason are not eligible to sit in the House of Lords. Though the full House contains over 1000 members, the average attendance is

about 250 members. Members of the House of Lords do not receive any salary. They are entitled to claim a small amount towards expenses incurred for attending the sittings of the House.

The presiding officer of the House of Lords is the Lord Chancellor and he is an important member of the Cabinet. The quorum of the House is three. To pass a legislative measure, there should be a minimum of 30 members in attendance.

POWERS AND FUNCTIONS

LEGISLATIVE

The House of Lords has a good deal of share in the legislative work of Parliament; the main legislative work of the Lords is in the revision of bills. The object of revising a bill is to make it more workable. These revisions help to set right many practical defects found in a bill.

All money bills and bills concerning the major policies of the government originate in the House of Commons. A bill to be considered a money bill, should be so certified by the speaker of the House of Commons. According to the Parliament Act of 1911, the House of Lords could withhold its assent to a money bill only for a period of one month. After the lapse of this period, even without the approval of the Lords, the bill could become law after having been submitted to the Sovereign. An ordinary bill could be delayed by the House of Lords for a period of two years only. This position was changed by the House of Lords Reform Act, 1949. This measure was passed by the House of Commons in 1947. It could not become law until 1949 because the House of Lords which objected to this act delayed it for two years using the provisions of the Act of 1911. According to the Act of 1949, the House of Commons should repass a measure only once over the Lord's objection. Only two sessions of Parliament are required to pass a measure objected to by the House of Lords.

DELIBERATIVE

Debates in the House of Lords are mainly concerned with general issues of policy. These debates are usually of a high standard. This is partly because the House has elder statesmen, ex-ministers, former Governors-General and experts in particular fields as its members. A member of the House of Commons may speak to attract attention and to gain publicity. But a peer speaks only

when he has something valuable to say. The Lords have considerable freedom from party pressure. Pressure of time is not so great in the House of Lords. The government does not claim priority for its business in the House of Lords. So a peer may raise any subjects he likes. Debate is free and there is no closure. Debates in the Lords further policy formation, and a wide range of opinions are expressed in them. They influence both the government and public opinion. By its debates the House of Lords makes a valuable contribution to consultative government.

JUDICIAL

Disputed claims to the peerage are decided by the House of Lords. It may punish a person for breaches of its own privileges. The last impeachment before the House of Lords was in 1806. Theoretically, it still has the power to impeach important officers of the crown. It can no longer try peers. This privilege was abolished by the Criminal Justice Act of 1948. For criminal and civil jurisdiction, the House of Lords is still the supreme and final court in the United Kingdom. This function is performed not by the whole House, but by nine Law Lords and by its members who have held high judicial offices. There are 24 such Lords.

CONSTITUTIONAL

In a way the House of Lords in helpful to the Prime Minister. A new entrant to government would safely be made member of the House of Lords. It is also a place of semi-retirement for elder statesmen. The wisdom, experience and expert knowledge of eminent people who do not want to participate in party politics may be made available to the nation by making them members of this chamber. The House of Lords, by its criticism of bills can act as check on the "rash, hasty and undigested legislation of the House of Commons". The publicity given to its debates brings all aspects of the policy of government to the notice of the public. The use of its delaying power may help the Commons to think twice about a particular legislation which may be the result of temporary democratic favour. Though the House has lost much of its powers, it still has its due place in the constitutional set up of the country.

CHAIRMAN OF THE HOUSE OF LORDS

Check Your Progress

4. Explain the powers of House of Lords.

The presiding officer of the House of Lord is the Lord Chancellor who is a member of the cabinet. The Lord Chancellor is usually a peer. Therefore,

he occupies a seat on the woolsack which is outside the limits of the House. If a non-peer is appointed, he is raised to peerage. The power and functions of Lord Chancellor are many and varied. The House controls its own procedure. The presiding officer has no power to rule on points of order. If the Lord Chancellor is a peer, he votes like any other peer. He votes first if a division takes place, but he has no casting vote. His powers as presiding officer are absolutely insignificant as compared to those of the speaker of the House of Commons.

3.9 THE HOUSE OF COMMONS

The House of Commons is the Lower House of British Parliament. It is the most powerful House in the world; it contains 635 members. Members are elected by universal adult suffrage. Citizens who have completed 18 years of age who are residents of the constituency are eligible to vote. Peers, aliens, lunatics and idiots, persons serving sentences for felony of more than 12 months imprisonment, and persons disqualified upon conviction of corrupt practices at elections are not eligible to vote. In order to stand for election to the House of Commons a person must be British subject over 18 years of age and be nominated by 10 electors. Members of House Lords, clergy of the Church of England and the Church of Scotland, and Roman Catholic priests, aliens, bankrupts, felons still serving sentence, civil servants, judges, ambassadors, members of the regular armed forces and the police forces, paid members of the Boards of nationalised industries, directors of the Bank of England etc, are not eligible to stand for election to the House of Commons.

The tenure of the House of Commons is 5 years. If a member resigns or dies in office, bye election is held to fill that seat. The House may be dissolved even earlier if the Prime Minister advises the monarch to make an appeal to the people. The House can prolong its life beyond 5 years also in time of grave national crisis. According to conventions, the Parliament must meet atleast once in a year to pass certain essential bills like the Army Act and the budget. The House meets five days in a week.

PRIVILEGES OF THE HOUSE OF COMMONS

FREEDOM FROM ARREST

This privilege cannot be claimed on criminal charges. The privilege from arrest also extends to witnesses before the House or its committees and to the servants of House.

FREEDOM OF SPEECH

The privilege was originally meant to protect members against the Sovereign. This privilege now confers immunity from action for slander, or words spoken in Parliament and to all papers printed by order of either House and to faithful reports.

FREEDOM OF ACCESS TO THE SOVEREIGN

The House, as a body, has freedom to present an address to the sovereign requesting a favourable consideration of its proceedings.

THE RIGHTS TO PROVIDE FOR ITS OWN CONSTITUTION

Utilising this privilege the House issues writs for filling casual vacancies, expels or suspends members bringing discredit upon the House and takes decisions as to the qualifications of sitting members.

THE RIGHT TO REGULATE ITS OWN PROCEEDINGS

The House can discuss any business. It can be decide the order of business too. The Commons are the only judge of matters arising within the House.

THE POWERS TO PUNISH FOR BREACH OF PRIVILEGE OR FOR CONTEMPT

Breach of privilege is contempt of the High Court of Parliament. Action can be taken by either House to maintain its dignity and efficiency.

3.10 THE SPEAKER

The speaker is the presiding officer of the House of Commons. There is a very healthy convention that "once a speaker always a speaker". It implies that the speakership is a very exalted office and its holder may continue to occupy it till he likes. His non-political character is his best qualification which entitles him to seek re-election and return unopposed.

Functions of the speaker: The main function of the speaker is to preside over meetings of the House in full session. This task can be fulfilled by the speaker satisfactorily only by strict observance of his independence and impartiality. It is due to the care taken by all members of the House to preserve his position that the speaker stands above party politics. His decisions are rarely questioned. It is the function of the speaker to see that the debate continues in

Check Your Progress

5. Bring out the position of speaker.

an orderly manner. Failure of the House to respond to the authority of the speaker may lead to adjournment or suspension of its sitting. The speaker enforces and interprets the rules of procedure according to standing orders and the precedents, established by his predecessors. A debate must be free and fair. To achieve this, the speaker pays attention to three points, First, he ensures that all parties have a fair share of the allotted time. Secondly, he sees to it that the individual member is protected from the party machine in asking question and getting into debate from time to time. Thirdly, he safeguards the House from any undue encroachment by government. The speaker has final authority for admitting amendments, questions and the subjects to be debated on adjournment motions. The speaker has the sole authority for certifying a bill as a money bill.

The speaker plays a major part when the House has to reach a decision. In case of a tie, he has a casting vote. He issues warrants for the holding of bye-elections, appoints the examiners of private bills, selects the chairman of standing committees and allots bills, to the various standing committees.

WORKING OF THE HOUSE OF COMMONS

Parliament is summoned and dissolved by the Queen. The life of each parliament is divided into sessions. The session of both Houses is ended together by prorogation. The new session of Parliament is opened by the Queen in person when she makes her Speech from the Throne in the House of Lords or by Royal commissioners on her behalf.

The formal procedure of the House of Commons is laid down by its standing orders and also by the customs which have been established over the centuries. They also embody the spirit of fair play. The procedure followed in the House of Commons promotes moderation both in the conduct and language of members. The ceremonial procedure followed by the House affords dignity to its meetings.

The sessions of the House of Commons usually last to about 150 days; more than half of these days are taken up by private members business and routine and financial business. Discussion is restricted to matters on the order paper, Priority is given to government business. Arrangements for debate are made "behind the Speaker's Chair". The order of debate is arranged beforehand and speeches are kept short. The legislative programme is carefully planned by the cabinet.

HOUSE OF LORDS AS A SECOND CHAMBER

The tests of a good second chamber are the following : It should be composed differently from the popularly elected lower House. It should neither be a rival of nor an obstruction to the lower House. In a considerate and methodic way it should revise bills. Men of ability and experience should have place in the second chamber. In the light of these let us now critically evaluate the House of Lords.

The House of Lords is differently constituted from the House of Commons. It contains the leading figures in many walks of national life. This makes it a good deliberative assembly. Original, specialist knowledge is brought to the deliberations of the House. We saw earlier that over nine tenths of the members are hereditary peers. Hereditary principle is an anachronism today. Hereditary is no guarantee of fitness to govern. The upbringing and background of the hereditary peers may keep them out of touch with the aspirations of the electorate. Important sections of the community are poorly represented in that House.

By the Parliament Acts of 1911 and 1949, the powers of the House of Lords were very much reduced. It is said by critics that the House is a mere ornamental chamber doing no positive good to the country and for this reason it should be abolished. Its composition is thoroughly undemocratic. Most of its members are managers and proprietors of big industries and many of them are related to the leading business magnates.

At the same time, we must note that the House of Lords also serves useful purposes in the legislative sphere as discussed earlier.

3.11 PROCESS OF LAW-MAKING

A legislative measure, until it receives the assent of the Sovereign is known as a bill. Any bill, except money bill, can originate in any one of the two Houses.

FIRST READING

The first stage is the introduction of a bill caused first reading'. The mover gives his intention to the speaker who at the appointed time calls him to introduce his bill in the House. Then, the mover, with the leave of the House,

stands up and reads the title and some important passages of the bill. There is usually no debate and a bill crosses this stage. The bill is printed at government expense in order to be circulated among the members, well in advance for making preparation for the forthcoming debate.

SECOND READING

The most important and crucial stage in the life of a bill is second reading on a day and time and fixed by the speaker. The general principles of the bill are taken up for discussion and a general debate begins. As bills are mostly moved by the ministers the leaders of the opposition try to defeat the government for the sake of registering their vote of censure. Bills moved by private members may fall through at this stage.

COMMITTEE STAGE

Then follows the committee stage. A bill passed by the House after its second reading is "committed" to a committee. If it is a money bill or a bill of extra-ordinary importance to be passed expeditiously, it is referred to the committee of the whole House; if it is referred to a select or seasonal committee, it is subsequently examined by a standing committee. The mover of the bill is there to defend his bill, but the opposition takes another chance of destroying or defeating it. After the bill is passed by the committee, it is reported to the House.

REPORTING STATE

The bill is once again brought before the House as a whole along with the report of the committee and once again the members have the chance of ventilating their views on it. On the fixed date and time, the mover of the bill requests the House to allow him to present his bill with committee report for discussion. The discussion proceeds clause wise. At times various parts of the bill are grouped to save time of the House and to finish discussion, within the allotted time. The use of closure motion is the best safeguard to check the tendency of unending talks.

THIRD READING

A bill after crossing this stage comes for the third reading before the House which is a formality. On a fixed date and time, the bill is taken up for final discussion. A general debate ensues but no substantial amendment can be

moved; only verbal changes may be suggested or made. If a bill secures majority support in voting, it is passed.

BILL IN THE SECOND HOUSE

A bill passed by the House of Commons goes to the House of Lords for its concurrence. There the bill passes through similar stages. If the Lords give their concurrence, the bill is supposed to be passed by both the Houses of Parliament; if there is mounting opposition in the House, the matter is sought to be settled by exchange of written messages. Amendments made in the bill by the Lords should be acceptable to the Commons. The Commons could either reject or approve the amendments made by the Lords. The bill may go to and from between the Houses three or four times. If agreement is not possible between the Houses a conference may be held for reaching a compromise.

THE ROYAL ASSENT

Urgent bills will be presented for the Royal assent immediately. Usually, bills are presented in batches at the end of the session or before a long adjournment. The Royal assent is now purely formal.

A long time is taken by a bill to pass through the various stages. Except in the case of money bills more than one stage can be taken on the some day. In emergencies all stages can be completed in a few hours.

PRIVATE MEMBER'S BILL

A Private member's bill is a bill introduced and piloted through the House by a private or unofficial member. Private member's bills are not of much importance. These bills are introduced in more than one way. Usually it is by motion for leave to bring in a bill on a Tuesday or Wednesday under the Ten Minutes' Rule. The member introducing the bill speaks in favour of the bill for ten minutes, any other member can speak against it for a similar time. If the House decides in favour of the bill, it is considered to have been read a first time. Then a day for the second reading of the bill is announced. The chances of a private member's bill becoming an Act are very bleak indeed. Quite a few hurdles are to be overcome at each stage.

PRIVATE BILLS

Check Your Progress

6. Discribe the Process of Law Making.

A Private Bill is a bill for the particular interest or benefit of any person or persons. Private bills could cover a wide range of subjects. The following are the stages through which a private bill passes.

PETITION, PRELIMINARY ADVERTISEMENT AND EXAMINATION

A private bill should be accompanied by a petition signed by the "Promoters of the Bill". The Bill and its purposes should be published in local newspapers twice and also in the London Gazette. Every one concerned should be intimated. Two Examiners, one by the speaker and the other by the House of Lords are appointed to examine the Bill.

FIRST READING

If, on the examination, the bill is found to have complied with standing orders it is presented and laid on the table of the appropriate House. This is the first reading.

SECOND READING

Four to seven days should pass between the first and second reading. If the bill is unopposed, it is taken up as unopposed private business. If it is opposed, a date for debate is fixed by the Chairman of Ways and Means.

COMMITTEE STAGE

After its second reading, a bill is referred to the committee of selection. Unopposed bills go to the committee for unopposed bill; Opposed bills are sent in groups to a Private Bills's committee consisting of four members of the House of Commons or five of the Lords. This is a very important stage. A Private Bill Committee is more like a court of law. The proceedings are semi-judicial. The first task of the committee is to determine whether the bill is in public interest. The final bill is reported to the House.

CONSIDERATION STAGE AND THIRD READING

A bill amended in the committee should lie on the table of the House for three days before it is taken up for consideration. Unamended bills are read a third time. Usually, the bill goes through without amendment or debate. The stage is similar to that of a Public bill; only verbal amendments are made at this stage.

ROYAL ASSENT

If the bill had originated in the Commons, it is reported to the House of Lords. After having been approved by the Lords and after having obtained the

Royal Assent the bill becomes an Act and is printed in a separate volume of statutes.

CONTROL OF THE HOUSE OF COMMONS OVER FINANCE

The Government's proposals cover the raising of necessary revenue and the ways in which the revenue shall be spent; parliament's criticisms range over the nature of the taxes which are levied, the desirability of the purposes for which revenue is raised and the possibility of any wastefulness in the expenditure. The upper chamber cannot amend a financial bill. All proposals for raising money, either by the imposition of new taxes or by the modification of existing ones, must be initiated by a minister on behalf of the Crown. To have an effective supervision of expenditure, the House of Commons must ensure that the spending is desirable, economic and is in accordance with the authority given. In this the House is assisted by the Comptroller and Auditor General and by the Public Accounts Committee.

3.12 COMMITTEE SYSTEM

A large body like the House of Commons is suitable for discussing principles. It is not suitable for the examination of details; so committees containing a few members are constituted to discuss the details of proposals and to report back to the House. Today, there are five main types of Committees in the Commons.

Committee of the Whole House: The House of Commons may sit as a Committee of the Whole House. When the House goes into Committee the speaker leaves the chair and the proceedings are controlled by the chairman of the Ways and Means Committee.

Any matter may be referred to this Committee. But it considers important bills of wide interest. A bill could be referred to this committee either in whole or in parts. When the government has a narrow majority in the Commons, it is usual for all controversial bills to be referred to the Committee of the Whole House. This is due to the fact that in a Standing Committee the chances of defeat for the government are great.

Standing Committees: A standing committee considers and amends all public bills except bills imposing taxation, Consolidated Fund and

Appropriation Bills, and bills for confirming provisional orders, should be referred to the Standing Committees.

The House appoints as many Standing Committees as are necessary. They are designated A, B, C, D and so on. Each Standing Committee has between 20 and 30 members nominated by the Committee of Selection. The relative strength of parties in the House is reflected in the Committees. Members are also chosen on the basis of qualifications needed for particular Committees. Due representation to different parts of the country is also given.

Each Standing Committee has a chairman. Chairmen are appointed by the speaker for each bill from the Chairmen's Panel. The Chairmen's Panel consists of about ten Members of Parliament nominated by the speaker at the beginning of the session. The quorum of a Standing Committee is one-third of its total membership.

Details of a bill are discussed fully in a Standing Committee. This is usually done by members having expert knowledge of the subject. Publicity is seldom given to the proceeding of the Standing Committees.

Select Committees: Select Committees are appointed by the House to consider occasional bills, conduct enquiries and exercise supervisory functions. Normally, there are fifteen members in each Select Committee, Seasonal, Adhoc, and Specialist are the three kinds of Select Committees.

The following are the seasonal committees set up by the standing order of the House at the beginning of every session to exercise supervisory functions.

(1) The Public Accounts committee, (2) The Committee of *Selection consisting* of 11 members (It nominates members of Standing Committees, nominates the eight members of Standing Orders Committee; allocates Private bills to Private Bills Committees and appoints the members to Private Bill Committees), (3) The Standing Orders Committee, (4) Estimates Committee (5) The Committee on Privileges, (6) The Public Petitions Committee, (7) The Publications and Debates Reports Committee, (8) The House of Commons (Services) Committee, (9) The Statutory Instruments Committee, (10) The Select Committee on Nationalised Industries and (11) The Committee for Parliamentary Commissioner.

Adhoc committees are appointed to examine bills and to conduct enquiries.

Specialist Committees are found to supervise the work of particular departments. The Select Committee on Science and Technology, and the Select Committee on Agriculture are the only two Specialist Committees so far set up (The latter was dissolved in 1969).

Joint Committee: Joint Committees are used to examine non-political matters of equal concern to both Houses and to examine private bills involving and important matter or principle.

A Joint Committee consists of a small select committee of each House sitting together and usually presided over by a peer. Each part of the committee reports to its own House.

5. Private Bills Committees: These committees are of two kinds. One is the Committee for unopposed bills. It consists of the Chairman of Ways and Means, the Deputy Chairman and four other members selected from a panel appointed by the Committee of selection, Another kind is the committee for opposed bills. This consists of a chairman and three members, all nominated by the Committee of Selection.

Though committees are playing increasingly important role in legislation in Great Britain, their power is not equal to that of their counterparts in the United States of America.

SUMMARY

Cabinet and council of Ministers are the true administrators of England. The Cabinet dictatorship, collective responsibility of cabinet are analysed. British Prime Minister is called as first among equals. He is the root of the British administration. The functions and powers British Prime Minister is increasing day by day. British Parliament has created an example for the world in the functioning of parliamentary Democracy. This unit gives a full picture of the Bi- Cameral system in U.K. Another interesting feature of this unit is the role of British speaker. The second chamber, the House of Lords is slowly loosing its importance and powers. The causes has been analysed. The committee system is also discussed.

KEY WORDS

Curia Regis - Cabal - Convention - Collective responsibility - Peerage - Privileges - Money Bill - Committee of whole House.

ANSWER TO CHECK YOUR PROGRESS

For Question No 1	Refer Section 3.4
For Question No 2	Refer Section 3.5
For Question No 3	Refer Section 3.7
For Question No 4	Refer Section 3.8
For Question No 5	Refer Section 3.10
For Question No 6	Refer Section 3.11

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MODEL QUESTIONS

1. Discuss the position and powers of the Prime Minister of UK.
2. Describe the composition and functions of the House of commons?
3. Explain the process of law making in England?

UNIT – 4

GOVERNMENT OF GREAT BRITAIN JUDICIARY – LOCAL GOVERNMENT – POLITICAL PARTIES – CIVIL SERVICE

INTRODUCTION

The role of independent judiciary is very much essential for the efficient functioning of political system. Among the three organs of government Judiciary is very important. British judiciary has set a example for justice. Judiciary plays a very valuable role is protecting the rights of the people. The structure and functions of Local Govt. is discussed. In the modern Political Systems, Political Partiers play a very important role. For the proper functioning of participatory Democracy parties are very much essential. England has a very efficient democratic system'. In England two party system in existence. The opposition party in England in called as his Majesty's opposition. They are namely conservative party, and labour party. The conservative party gives importance in traditionalism, where as Labour Party is the expression of working class movement. Pressure groups also play a dynamic role in Britain. Every five years elections are conducted in U.K. The citizens above 18 years of age is the qualification for voting. The civil servants only has to help the Ministers in administration. Till the middle of the 19th century patronage system was in existence, after 1853 North cote – Travelyan Report suggested changes. Again in 1966, 1968, 1971 number of administrative reforms reports appeared. 198(onwards proper classification of civil servants came. The basic features o civil service is analysed in this unit.

OBJECTIVES

1. To understand the functions of Judiciary in England.
2. The structure and functions of Local Govt. is highlighted.
3. To learn about the working of two party system.
4. To know about the system Civil Service System.

STRUCTURE

The Judiciary

Rule of Law

4.1 JUDICIARY

Until the middle of the 19th century, the English court system was a bewildering collection of separate courts which default dealt with the same sort of cases and administered the same sort of law. Even today there is no single unified court system for the whole of the United Kingdom. There is one system for England ad Wales another for Scotland and yet another in Northern Ireland. As far as the court system in England and Wales is concerned, a determined effort to bring about uniformity was made through the great Judicature Acts passed between 1873 and 1876. The court system as it exists today is based on the vertical division between courts dealing with criminal and civil cases. A criminal case is one in which the prosecution is conducted in the name of the crown and a civil case in one in which one private citizen or corporation brings a suit against another.

CIVIL JURISDICTION

With two minor exception civil cases go either to the country court or to the High court. The first exception covers cases dealt with by courts of summary jurisdiction and the second covers those dealt with by a few Borough and Local courts.

COUNTY COURTS

Country courts were set up in 1846. There are now about 500 Country courts in the United Kingdom. Judges of the country courts are appointed by

the Lord Chancellor from barristers of atleast seven years standing. They retire at the age of seventy two. Each court has a registrar appointed and removable by the Lord Chancellor. Though the Registrar is the administrative head of the court he hears cases. The jurisdiction of the county court is both local and limited.

THE HIGH COURT

Apart from a few cases which are exclusive to the county courts a civil action may commence either in the High Court or County court. It is usual for larger cases to go the High court. A high court case goes to one of the following three divisions.

a. The queen's Bench Division: As successor to the old common law courts, it hears both civil and criminal cases. The Lord Chief Justice is the president of this court. An important function performed by the Queen's Bench Division is the supervision of interior courts and tribunals through prerogative orders and the protection of the liberty of the individual by the issue of Habeas Corpus.

b. The Chancery Division : The nominal head of this division is the Lord Chancellor who is too busy to preside. The Master of the Rolls, the Lord Chancellor's deputy, used to perform these duties. As he presides over the Court of Appeal, he too is much pressed for time. Hence the bulk of the work is done by the puisne judges. The Chancery Division has exclusive jurisdiction over certain maters. In certain cases it holds concurrent jurisdiction with the Queen's Bench.

c. Probate, Divorce and Admiralty Division : Probate means the official proving of a will. Cases concerned with divorce are heard according to the Matrimonial Cases Act 1950. The Admiralty Court is highly specialized in maritime law.

RESTRICTIVE PRACTICE COURT

This court was set up by the Restrictive Trade Practices Act 1956. It is a superior court of record and is parallel to the High Court. It consists of five judges and not more than ten lay members. A judge and two lay members constitute the quorum. The decisions of this court are given on a majority basis.

THE COURT OF APPEAL

Appeals from both the County Courts and the High Court go to the Court of Appeal. The work of the Court of Appeal is performed by the Master of the Rolls and eleven Lord Justices of Appeal who are either ex – judges of the High Court or barriers of atleast fifteen years standing. The Lord Chancellor, any ex – Lord Chancellor or Lord of Appeal in ordinary, the Lord Chief Justice and the President of the Probate Divorce and Admiralty Divisions are ex – office members of this court. Appeals are heard by a minimum of three judges and decision is made by majority.

THE HOUSE OF LORDS

The House of Lords is the final court of appeal for England, Wales, and Northern Ireland. It is the final court of appeal for civil cases from Scotland. Appeal can made to the House of Lords, only if permission to do so is granted either by the Court of Appeal or by the House of Lords. When the House hears appeal lay peers do not sit in the House. By convention, the judicial work is done by the Lord Chancellor, the nine Lord of Appeal in ordinary, ex – Lord Chancellor and such other peers who have held high judicial office. The quorum is three. Although they hear arguments separately from the House as Appellate Committee, their judgement is delivered when sitting as the House of Lords. Blair abolishes UK's oldest institution of House of Lords as the Court of appeal and replaced by a US style supreme Court, which announced on June 13, 2003.

CRIMINAL JURISDICTION

Criminal cases are also divided according to their importance. Lesser cases go to the Courts of Summary Jurisdiction while major cases go to Quarter Sessions of the Assizes.

MAGISTRATES COURTS

Magistrates are also known as petty sessions. Minor offences are tried before these courts. There are four main types of these courts. They are the following (a) Magistrates court consisting of two to seven justices of the peace, (b) Stipendiary 'Magistrates' court contains a full – time paid magistrate appointed by the crown on the advice of the Lord Chancellor from barriers or solicitors of atleast seven years standing (c) Metropolitan stipendiary court contains a stipendiary magistrate appointed by the crown on the advice of the

Lord Chancellor, and these magistrates retire at the age of seventy, (d) Juvenile and Matrimonial courts have separate proceedings and each has three magistrates, one of whom is a woman.

THE CROWN COURT

The Crown court was set up by the Courts Act. It replaced the former assize courts and quarter session. It sits nearly at 90 centres spread throughout the country. It deals with criminal cases of a more serious nature and hears appeals from the Magistrate's courts. Trial by jury is provided in court.

COURT OF APPEAL

This court is set up in the place of the former Court of Criminal Appeal. Usually this court consists of three judges and in some important cases it has four judges. It is presided over by the Chief Justice of Appeal. Appeals from the crown court are taken to this court.

THE HOUSE OF LORDS

At the apex of the Judicial structure stands the House of Lords. It is the highest appellate court for civil as well as criminal cases.

LAW ADMINISTERED BY THE COURTS

The source of the law administered by the courts are the following:

COMMON LAW

England had developed her own system of law, though, the ecclesiastical courts were mush in favour of the Roman system. Before a centralized system of government had evolved in England, offences were tried in local courts. The will of the clergy and the will of kings could not prevail against the independent system developed by the English courts.

In the 12th century the king's justices were sent out to all parts of the country and they tried cases, basing their decision on similar cases tried at earlier times. From this practice more uniformity in the administration of this law was introduced and precedents were established. In the 13th century these precedents became an integral part of the law.

Check Your Progress

1. Explain the hierarchy of Judicial System in UK.

The common law is the case – law or judge – made law. The provision of the common law are taken fully into account by parliament in the enactment

of statues. From time to time particular provision or related sections of the common law are supplemented by statue law. The common law at one time dealt with a number of criminal matters, but nearly, all important aspects of this have been superseded by statue law.

Today common law is found in the legal treaties and in the successive decisions of the courts. Common law rules guide the judges in their decision when they are in doubt over the interpretation of its statue.

CASE LAW

Decision of the higher courts are quoted as authoritative pronouncements when cases involving a similar point of law in the way they apply common rules. In the decision they give in particular cases the judges make law.

RULES OF EQUITY

Equity is a body of rules which grew from the decisions of successive Chancellors. Equity does not contradict common law, but tries to correct its defects. Equity supplemented common law and like common law, it was molded and developed by the judges who drew chiefly from Roman law their own conscience.

POSITIVE LAW

Acts of parliament are the status. They form the bulk of law. They are supreme over both the judiciary and all other forms of law. In modern this is the biggest source of law.

AN APPRAISAL OF CIVIL AND CRIMINAL JURISDICTION

The organization of the Divisions of the High Court with civil cases is illogical and wasteful. There is inordinate delay in hearing cases. Civil litigation is very costly. Much of the time of the judges is spent in organization matters. There is no guarantee that a judge will have organizing ability.

On the contrary administration of criminal justice is expeditious, certain, cheap and impartial. Within twenty – four hours of his arrest the accused is bought before a court. The quality of British justice is based on two important principles. First, changes should take place due to the development of existing institutions and not by innovation. Second, the English feel their liberties

could be safeguard only if justice is considered as an end in itself. Judges should be free from political interference and in the matter of awarding justice they should not show any special consideration to authorities.

4.2 RULE OF LAW

Law has two purposes. First, it restricts the actions of the individuals. Second it protects the individual by defining the powers of those in authority. The "rule of law" stresses the fundamental idea that law is all important. It provides protection to the citizens. It is a defence against arbitrary government. Law is to be used to maintain order. Any exercise of power also should be in accordance with law. In short, rule of law simply means that law rules. Law is binding both on the individual and on the government.

It was Professor Dicey who developed the idea of the rule of law. He regarded it as the fundamental principle of the British constitution. His definition of the rule of law has been subjected to every criticism, chiefly by Professor Sir Ivor Jennings. The following are the main principles of the rule of law.

1. Law should be precise and understandable.

2. Actions of the government and its officials must have the backing of law. None should arbitrary interfere in the way of life of an individual. An individual may be arrested only for a definite breach of law.

3. A citizen may be punished only for a breach of law and that too after a fair trial before an impartial tribunal.

4. Interpretation of law by the judiciary should not be influenced by the parliament or by the Government.

Let us now examine in detail the three propositions of the rule of law developed by Professor Dicey.

1. "No man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of the law established in the ordinary legal manner before ordinary courts in the land".

Supremacy of law is emphasized here. Punishments can be imposed only by the judiciary. Imposition of them can be done according to law only.

Every citizen has the right to personal liberty unless he has broken the law. That a citizen has broken the law should be proved in the ordinary court according to the procedure prescribed by law. The Petition of Rights (1628), the Habeus Corpus Act (1679) and the Act of settlement (1701) made available to the English people the above – mentioned provisions of the rule of law.

2. "Not only is no man above the law, but every man, whatever his rank or condition, is subject to the ordinary law of the realm amenable to the jurisdiction of the ordinary tribunals".

Dicey points out here that law does not make any distinction between classes of persons. Both the official and the private citizen should obey law and it applies equally to both. Disputes between officials and private persons should be decided in the ordinary course of law. No separate tribunals should be established to try officials. Dicey says, "every official from the Prime Minister down to a constable or a collected of taxes is under the same responsibility for every act done without legal justification as any other citizen".

An illustration may be cited to simplify this point. In 1763 John Wilkes, a Member of Parliament and publisher of the North Britain, and forty eight others were arrested on a general warrant issued by the then Home Secretary Lord Halifax. The charge was that Wilkes had attacked the king's speech in his paper. The general warrant was served under the personal superintendence of the Under Secretary, Mr. Wood, (A general warrant is one who does not specifically describe the place to be searched for, the persons to be arrested or the things to be seized). Mr. Wilkes sued the Home Secretary for wrongful arrest. The court awarded Wilkes 4000 pounds damages from Lord Halifax and 8000 pounds from Mr. Wood. In this case, not only a private persons was protected against the arbitrary actions of a government official but the government official found himself unprotected in a court of law though he thought that he was acting on behalf of and in the interest of the state. This case also decided that general warrants were illegal. The legal responsibility of ministers was also proved by this case. It was proved that a minister of the Crown could be prosecuted for his official acts before an ordinary court of law.

3. "With us the law of the constitution, the rules which in foreign countries naturally form part of a constitution code, are not the source, but the consequence of rights of individual as defined and enforced by the courts".

Dicey says that freedom of the citizen is not granted and guaranteed by the constitution. (In the United States the Declaration of Rights contained in the constitution grants and guarantees the rights of the citizens). Dicey points out the rights of individual transcends the constitution and that they are in existence before the constitution. He contends that the rights depend on the laws of the land. Freedom of the person, freedom of speech and the freedom of public meeting and the like are there not because they are granted by the constitution, but because they are part of 'Common law rights'. The contention of Dicey is that the constitution is the result of the ordinary law of the land, for, its general principles have evolved from the rights of individuals as upheld by the courts in specific cases. In other states the right of the citizens may be granted and guaranteed by their respective constitution; but in England they are provided and protected by the rule of law.

CRITICISM OF DICEY'S RULE OF LAW

The foremost critic of Dicey's exposition rule has been Sir Ivor Jennings. He attacked Dicey's views on two grounds.

Dicey overstresses the importance of individual rights. Dicey was influenced by the laissez faire philosophy and the principle of the common law. He intended to emphasize the importance of the individual. Jennings points out that Dicey failed to recognize that administrative law did exist and had existed for many centuries in England.

Jennings feels that the assertion of the third proposition that the constitution depends on the law is unjustified. As far as Britain is concerned, it is the parliament which is supreme. Parliament may make any law. It may even pass laws to alter the decision of the courts of law. Viewed from this angle it is parliament which is supreme and not the rule of law.

4.3 LIMITATIONS OF THE RULE OF LAW

Though the importance of the rule of law cannot be underestimated there are a number of exceptions to the rule of law. The rule of law does not operate for certain classes of people.

Check Your Progress
2. Bring out the Content of Rule of Law.

The Public Authorities Protection Act has given sample protection to government officials. If a suit against the government official failed, the plaintiff

was required to pay heavy damages. This act was replaced by another and the present Act protects the rights of the citizens.

"The King or Queen can do wrong". "The crown is not responsible for the actions of its employees. It is not possible to proceed against the sovereign in the court of law. In this instance the protection given to the individuals by the Petition of Rights becomes inadequate.

The action taken by the Home Secretary either in the grant or refusal of neutralization certificates cannot be questioned in a court. Similarly, the refusal to grant passports cannot be questioned in a court.

For the violation of the laws of the land the foreign emissaries cannot be prosecuted in the courts of England. Likewise, legal action cannot be taken against commercial ships belonging to other states.

The law imposed by Lord Chamberlain on theatrical productions cannot be lifted by any court of law. The Home Secretary has powers to detain and open private correspondence. There is a clear violation of the rule of law.

Judges cannot be held responsible for their official acts. The Crown has the powers to terminate the services of anyone under its employment at any time except judges. This means that the servants of the Crown hold their offices during the pleasure of the crown.

Citizens pursuing different vocations in life are not only to the ordinary law, but also to special laws relevant to their occupation. The personnel of the armed forced are subject to military law, apart from ordinary law. The clergy are subject to ecclesiastical law in addition to ordinary law.

From the above it is clear that rule of law does not have universal application in England.

THE RULE OF LAW TO-DAY

To discard Dicey's proposition as untenable is not right. With certain modifications we could fit them in to-day's set up. His basic idea had and still have an influence on government. Civil and criminal laws are administered in a pattern consistent with Dicey's views. The spirit of the rule of law has influenced the passing of a number of laws. It is because of the spirit of the rules of law that

Check Your Progre

3. Point out th Criticism of Ru of Law.

when courts review executive decision, they go beyond legal rules and examine whether the procedure has been followed fairly and also look to the proper motive. Freedom is not directly granted by the rule of law. But it is the rule of law which is at the back of freedom.

4.4 LOCAL GOVERNMENT IN ENGLAND

Before we discuss the structure and functions of English local government, it is very necessary to know that the United Kingdom is a unitary state. It is unlike the federal system where the powers are divided between the center and the states. In the unitary system such type of division does not arise. There is no division of power between the center and the province. The Central government is all powerful. The units may be created only for administrative convenience and they can enjoy such powers and functions as the central government grants to them. These units do not have any original powers. They are created and abolished by the central government as its will. It prescribes the organization and functions of the various local government units. They have to perform their functions within the time prescribed by the central government.

PRESENT SET UP

At present, there are six types of local government units in England. They are the Country, the Country Borough, the Borough, the Urban District, the Rural District and the Parish.

THE PARISH

Parish stands at the bottom of the local government. A parish may be either rural or urban. An urban parish has no machinery of local government because its needs are looked after by the urban district or the borough in which it is situated. The rural parishes are the real units of local government. A local area with a population of more than 100 persons, is usually organized into a parish. Each parish will have a parish council of not less than five and not more than fifteen members. The councillors are elected by the local electors at the mutual meeting of the parish.

Under the Local Government act of 1933, the Parish Council must hold an annual meeting and three other special meetings. The special meetings may be arranged by the Chairman and two Councilors. Since the meetings take place

long intervals, the work for the Parish Council is done by the Committees that the Council appoints. Thus council can appoint a committee for any purpose.

POWERS AND FUNCTIONS

The parish Council has extensive powers. The Parish Council can provide baths and wash houses. It can maintain footpaths. The Parish Council is a minor education authority and the Parish Council has the power of appointment of certain number of persons or the governing body of the schools. It is also the primary duty of the Parish Council to prevent the spread of disease.

THE RURAL DISTRICT

Above the Parish are the Rural District. They are formed by grouping of several Parishes. A rural district council consisted of a Chairman and a number of Councillors. The number of Councillors differs from district to district. Councillors are elected by the local people for a period of three years, but one third retire annually. The Councillors elect a Chairman for a year either from their own rank or from outside. If the person is elected from outside, he must be qualified to be a councillor. In all rural districts, a Vice – Chairman is also elected to preside over the meetings in the absence of the Chairman. The Chairman is the Justice of Peace during its term of office. The Council holds an annual meeting and the other special meetings every year.

POWERS AND FUNCTIONS

The rural as well as urban districts have two types of functions – one is obligatory and the other is permissive. The former means that these functions must be performed by the local authority and the latter means that the functions may be undertaken, if the local authority so desires. For example in an urban district, the provision of houses for working class is obligatory, while the provision of wash houses and baths is permissive.

There are a number of functions assigned to the Rural District Council. They are as follows:

1. The Rural Council after the public health.

2. It has various duties under the public health scheme such as supply of drinking water, prevention of disease, and sewage disposal.

3. Inspections of electric lighting, and provision of electric supply is also its duty.

4. It has the function of imposing rates which constitute an importance of revenue.

THE URBAN DISTRICT

A rural district is converted into an urban district when the population increases. When rural district becomes thickly populated it applies to the Country Council for the status of an urban district. If the request is granted it becomes an urban district. The difference between the rural district and the urban district is that the urban district enjoys more powers and dignity, though there is no change in its organizations.

COMPOSITION

There is no difference in the organization of an urban district and the rural district council. The urban district council has a Chairman and a number of Councillors. The number of Urban Councillors is not the same with all district. They differ from district to district. Like the Rural district Councillors the Urban District Councillors are also elected by the people for a period of three years. One – third of the members retire annually. The Urban District Council holds annual meeting and other special meetings on the request of the members.

POWERS AND FUNCTIONS

1. It passes bye-laws regarding the public health.

2. It promotes or opposes bills in Parliament.

3. Under the public health scheme the Urban District Council performs certain activities, such as supply of drinking water, prevention of disease and sewage disposal.

4. Inspection of electric lighting and provision of electric supply is also its duty.

5. It has the function of imposing rates which constitute an important source of revenue.

Check Your Progress

4. *Explain the Structure of Local Government in UK.*

The functions of the Urban Council include certain health functions such as control of offensive trade, maintenance of museums, art galleries, libraries and the arrangement of trading enterprise for example, gas works and transport.

THE BOROUGH

The Local Government Act of 1963 had divided the area of Great Britain into 32 boroughs. Generally when an urban districts becomes more thickly populated like a city, the urban district applies to Parliament for a charter. When the charter is granted by the Parliament, the urban district becomes a borough. The borough has a governing body which is composed of three elements- the councillors, Alderman and the Mayor. The Councillors are elected directly by the people for a term of three years. Aldermen are elected by the Councillors for a term of six years, half of them retiring after three years. The Mayor is elected in a joint sitting of the Councillors and the Aldermen.

THE FUNCTIONS OF BOROUGH

1. Maintenance of roads, (cleaning, paving and improvement)
2. Lighting of streets.
3. Collection and disposal of the refuse.
4. Provision for public libraries and museums.
5. Registration of births, marriages and deaths.
6. Inspection of factories, shops, food and drugs.
7. Establishment of T.B. Sanitoria.

THE COUNTY BOROUGH

When the borough expands into a big city, it applies to the parliament for the status of a county borough. If the request is granted the borough becomes a county borough. The functions and powers of the county borough is equal to our municipal corporations in India. These types of local government are called county borough because it combines the powers adjunctions of both the county and the borough. This country borough is completely independent of the authority of the county council. There are 182 county boroughs in England and Wales.

The country borough has a council. It consists of three elements namely, Councillors, Aldermen, and Mayor. But unlike the borough, the county boroughs enjoys more power and dignity. To put in the words of Jackson, "the county borough is , from the administrative point of view, self – contained" Professor Fine writes, "the power of county boroughs are, roughly speaking, the sum of all the functions compulsory and permissive of county councils and all other local authorities. The powers are, therefore, very comprehensive". These powers include all forms of housing, public assistance, maternity relief and child welfare, appointment and supervision of midwives, mental treatment, welfare of the blind, tuberculosis, registrations, licencing and education.

THE COUNTY

In England now there are two types of counties. One is historic counties and the other is administrative counties. The whole area of England at present is divided into fifty two historic counties. But since 1888 the historic counties are no more areas of local government. They are all constituencies for the election of members of parliament. There is no county council or elected governing body in the historic counties. So it is not really a local government units and we are not concerned with it.

The administrative counties are the unit of local governments. These are created by the Local Government Act of 1888. In 1965 the whole England was divided into fifty eight administrative counties. The governing body of the county is the county council. This council is composed of three elements. Councillors, Aldermen and Chairman. The Chairman is the Presiding officer, and he represents the country on ceremonial occasions. It may be interested to note that in all local governments the governing body as a whole serves as a legislature and the executive organ of the local administration., The Councillors are directly elected from the people for three years term. Among the Councillors the Aldermen are elected. The number of Aldermen is one third of the number of the Councillors with six years term, and half of them retire after every three years. The powers of the Aldermen are same as the Councillors. The Councillors and the Aldermen together elect the County Chairman. The council usually meets four times a year.

FUNCTIONS OF THE COUNTIES

The Following are the functions of counties

1. The highway are entrusted to them. They have not only jurisdiction over the main roads, but they also take over the whole of the highways in several districts.

2. The county council has acquired great powers in town planning.

3. The county has the responsibility for the repair of the existing bridges and erect new ones.

4. To prevent and suppress nuisances and water pollution.

5. The management and support industrial and reformatory schools.

6. Granting of licenses for race courses.

7. In matters of trade, the country council has extensive powers. For example it ensures uniformity in weights and measures.

8. The sources of income of the counties are tools, fees, licenses fines for violation of bye – laws and grants given by the central government.

4.5 PARTY SYSTEM

The organization and working of political parties is indispensable for running a modern political system. The political parties alone make the system of representative government workable. Being model of representative government Britain can be exception.

The British party system has an evolved character. The history of its origin and growth dates back of the early phase of the modern period. At the dawn of the 17th century there was in Britain a Church Party, which aimed at uniting all British Protestants under one organization against the pope. But later they were divided into supporters of the monarch and the church and those of Parliament. During the revolution of 1642 – 49 the Cavaliers supported the Church and monarch and the Roundheads supported the Parliament. When the principles of parliamentary sovereignty had been established after the reign of William III, the two parties assumed new names. Torry and Whig. The backbone of the Whigs was the family connection of the great landed magnets, whereas the Tories were mostly drawn from the lesser landholders. The Reform Act of 1834 was the result of this growing liberal influence and the Whigs were responsible for its passage. After 1851, the Whigs became Liberals, while Torries changed their names as Conservatives. During the middle of the 19th century two parties were clearly distinguished. The Conservatives supported the prerogatives of the crown, powers of the House of Lords, privileges of

church, rights of the landlords and imperialism. The Liberal party was mostly supported by the middle class and urban people. Many rich industrialists also became liberals who believed in free trade, the Liberal party supported changes in the form of government and industry in accordance with the prevailing conditions. Their ideals were freedom of trade, free competition and extension of franchise. A remarkable development took place in 1900. A third party was established at this time. This party was called the Labour Party. It is considered as the representatives of several unions. In due course, the Liberal party declined and its place was taken by the Labour Party, making Britain once again the example of a bi-party system. The Labour party had the first chance to be in power in 1922, when Ramsay Donald was appointed the Prime Minister.

The British party system has its own principal characteristics Firstly, Britain is the standing example of bi-party system since the 17th century. As Ivor Jennings points out, English History "gives the impression of a political duel". Secondly, the names of the political parties are quite misleading; while conservatives have not invariably been propagating reforms vigorously. Thirdly, the two parties of Britain have their sharp ideological distinctions. While the Conservative party stands for the protection and promotion of the interests of the affluent class having control over the means of production and distribution, the Labour party does the same by and large for the class of the workers. Fourthly, the important feature of the British parties in their organization and discipline. There is rigorous discipline due to which political maladies like cross voting and floor crossing are uncommon. The well – organized and highly disciplined character of the party system had made the working of the cabinet system not only to successful but also an ideal one. Lastly, British political parties have full faith in using democratic and constitutional methods to realize their aims and objectives. It is due to this, events of violent manifestation do not occur in that country. Any attempts to make use of violence or undemocratic action is carefully avoided. In fine, the stability of the British political system is based on the strength of the parliamentary party discipline.

CONSERVATIVE PARTY

The Conservative Party has never been a body of blind superstitious men. It is a party which stubbornly values the traditions and precedent and desires change at a very slow pace as far as possible. Though the conservative party has been associated with the native aristocracy. It has support from all classes of society. It represents the rich and businessmen; it is a party of the affluent strata of the society. At the same time, it is the party of paternalistic

concern for the lower middle class and the working class. Its principles are broad and its tactics are highly pragmatic.

The conservative party's structural set up shows that it has three different organizations – National Union of Conservatives, Unionists Association (formed in 1867), and the Parliamentary Party and Central Office (formed in 1870). The Central office is the secretariat of the leader of the party. The policy makers of the party are its Parliamentary Group consisting of the Conservative Member of Parliament. It works under the control of a leader elected by the body of the members of Parliament. After 1965 the Conservatives adopted a new method of electing their leader. According to the new procedure, the candidate in the first ballot must secure absolute majority of votes and 15% more votes then the runner – up. If it does not happen, then a second ballot takes place in which the successful candidate must secure 51% votes. If neither of the two works, then a third ballot takes place in which the matter is to be decided by the preferential vote system.

The leader occupies a central position in the party. He is elected for an indefinite period, as there is no provision for yearly election. If the party gets absolute majority in the House Commons he becomes the Prime Minister. If the party is in Opposition, he selects his 'Shadow Cabinet'. Party whips are appointed by him. His authority is not absolute because the backbenchers may impeach him for his acts of commission or omission. For instance, in December 1961 when the government had agreed to meet a request from the United Nations for 1000 pound bombs to be supplied to its forces in Katanga, the body of backbenchers forced the Prime Minister to change his decision. Margaret Thatcher, a conservative Prime Minister was forced to quit office for the sake of future of the party.

The party believes that the nation is sustained by the existence of differential social classes playing their part on the basis of merit. And there can be no class struggle or class enmity as said by the communists. They still stand for free enterprise. They think that profit motive and indirect taxation and decentralization conform to the principle of human freedom. State activity in the economic sphere should be limited. Detailed physical controls encumber rather than help the economy. They are the supporters of national institution like the Monarch and House of Lords.

The Conservatives are enlightened persons. They distain the idea of sticking to their old whims and caprices. They show their full eagerness to read the pulse of the time and for this sake, revise their thinking, in order to maintain dynamism in their political system. Though there are some minor differences of opinion among its members, the bulk of the party takes a line midway between the leveling, socializing and pacifistic pressure arising out of the British class structure and politically expressed by the Labour party and the defence of the existing social order.

LABOUR PARTY

Though officially founded in 1900, the Labour party has its antecedents in several labour and pro – socialist organizations like the Social Democratic Federation. Fabian society and Independent Labour Party. It was founded as a challenge to both the old parties.

The Labour Party is the political expression of working class movement. This movement manifested itself in Trade Unions and in Co-operative Societies, and in the great Chartist agitation of mid – 19th century. Labour party is a more socially representative organization. It draws members from walks of life. Its members are of many categories – University lecturers, journalists, shopkeepers, labourers, clerks etc, are member of this party. Thus, the party is dominated by the professionals and workers. The members of this party are of two types – individual and indirect. Individual members belong to a constituency, whereas indirect members are affiliated to a trade union or a socialist party. Individual members are required to pass an eligibility test of not being a member of any other organization or party, but no such test is required to affiliate members.

The organizational structure of the Labour party is fundamentally different from that of the Conservative party. As we have seen the Labour party is a federation of so many labour organizations. Because of its federative character, it has such bodies at the base like trade unions, young socialist societies and local co-operative societies. The Labour party of a constituency deals with headquarters. Representatives of all affiliated groups serve on a General Management Committee which elects the officers and an executive committee of the local party. Constituencies are subdivided into wards, each having its own Ward organizations and do not meet together at the constituency level. At the apex, there the Constitution Labour Party. It deals with all the matters like

raising funds, fighting elections, selecting candidates for local authority and nominating candidates for parliamentary elections. The Secretary is the important official of the Constituent Labour party. The Annual Party Conference has an importance of its own. These conferences are usually attended by a large number of delegates from affiliated organizations. It determines the general policy of the party. It elects a National Executive Committee consisting of 28 members. Besides, 12 members are elected by various group of trade unionists, 7 by party's constituency and regional federation, by socialist and cooperative societies and 5 are women. It meets regularly; its main function is to implement the decision taken by the Annual Party Conference. It also has some other functions like managing the party fund, maintaining liaison with the Parliamentary Party and enforcing discipline over local associations. It has its own Parliamentary Party that elects its leader for one year. Although he holds a very important position, he is not as prominent as his counterpart in the conservative party.

In policy the Labour party is committed to the doctrine of democratic socialism. It has a socialism of its own based on the ideal of Fabianism. But the socialism of the Labour Party is basically at variance with that of Marx. The main aim has become the establishment of a Labour government rather than bringing about socialism. The principle on which the Labour party stands may be described as follows; firstly, the Labour party blames that the economic institutions and societies are making men behave badly and live miserably. Therefore, it wants democracy to be extended from politics to the sphere of economics. It follows that scramble for private profit should be substituted by co – operative fellowship. Private firms and economic enterprise should be nationalized and the rest democratized. Secondly, it stands for the establishment of a welfare state so that private economic activity is placed under the regulation of social control. The Labour party desires that national institutions conform to the establishment of genuine democracy. They want to curtail the privileges of the Lords, and monarchy to remain like a nominal authority. Thirdly, the Labour party stands for collective co-operation among the nations of the world. It firmly believed that the peace in world should be achieved by way of strengthening the United Nations. The advanced nations should render help in the betterment of the poor and weaker nations of the world. The Labour party opposes a large-scale expenditure on nuclear weapons.

Check Your Progress

5. Explain the party system of U.K.

In short, the Labour Party's aims can be summed under three heads – social equality, economic security and industrial democracy. Both the parties in British political system have an aim in common; that is to win power by democratic means

PRESSURE GROUPS

Pressure groups are necessary to the government of our complex society. Britain is no exception. Increased governments participation in the social and economic life of the people has paved way for the growth of interest groups. Pressure groups interact with all parts of the machinery of government in the British political system. Today in Britain a number of pressure groups can be found. The pressure group phenomenon is not a new thing in British politics. Royal Boroughs in Scotland are regarded as the oldest interest groups in Britain which is dated back from the 14th century. Committee for the Abolition of Slave Trade and the anti – Corn Law League were the most successful interest group of the 18th century. However, the emergence of the Labour party has significance of its own as it grew out like 'a combination of various pressure groups, from the trade union and socialist movement'. Since Britain is a full – fledged democratic set up, the pressure groups have become a "growing force". As a result, numerous are the pressure groups right from business organization to labour unions. Britain being a unitary state the central authority is vested in the hands of a central government situated at London. So the pressure groups direct their activities towards the machinery of a single central government. Here the nature of the pressure groups is basically different from that of its American counterparts where federalism has divided the governmental power into two – centered and states. In Britain, most of the pressure groups have secret connection with one of the major political parties. British pressure group scrupulously observe the norms of democracy and constitutionalism. Pressure groups never indulge in any activity of violence to meet their interest. Lobbying is their traditional weapon and that may be used in the form of threats like a declaration about the withdrawal of support in the forthcoming general election. Offering money to an Member of Parliament for promoting any particular interest is a high crime in the English political system.

What is really impressive in British pressure groups in their simple and non-complex nature. They never adopt any extra – constitutional method to protect and promote their particular interest. The growth of stable and strong

bi-party system has made unnecessary the growth of pressure groups unlike the pressure groups in U.S.A and France. British pressure groups are more concerned with details of administration and are perhaps more powerful and successful.

On the basis of organization and structure, the British groups can be divided into two main types with a hybrid in between. While some like business groups, co-operatives and trade union defend economic interests, others promote special causes such as pacifism, nuclear disarmament, and protection of animals. In between these two we can find some interest and promotional groups. An initial distinction can also be made between sectional interest groups like the Automobile Association and cause groups like the Cruel Sports that are bodies created specifically to lobby on behalf of some general cause. Above all, sectional interest group may be classified as business, labour and professional groups. British Bankers Association, British Chamber of Commerce and such groups come under the business groups. Individual union come under labour groups. Then there are professional groups like British Medical Association, National Union of Teachers and so on. The case groups are formed for some purpose of general good like prevention of cruelty to animals and children, abolition of capital punishment and so on.

Though the pressure groups have truck with one of the political parties, their operation in the field of political process covers three areas – Executive, Parliament and the Public. Of these three levels, the pressure groups exert more influence on executive department because the governmental powers policy-making and policy implementing are concentrated in that department. Sometimes, the government departments and private associations co-operate with each other, because the nature of the public administration today needs more technical advice and information. For instance, the government usually consults some organizations like Country Councils Association and the Association of Municipal Corporations over the reform of local government. Apart from this, the pressure groups are able to exert influence upon individual ministers and civil servants in less formal ways. These developments led Mr. Beer to say that British political system is "quasi-corporatism".

When a group has failed to have satisfaction from an executive department they try to exert influence by taking the matters to the Parliament. This figures in

Check Your Progress

6. Bring out the role of pressure group in UK Political System.

lobbying, or contacting Members of Parliament for raising matter, putting resolution, demanding discussion and so on. It may be done through the representatives sitting in the House of Commons who could win election, in one way or other, with the help of some interest groups. Some groups may engage the professional lobbyist called parliamentary agents. Pressure groups like Confederation of British Industries are particularly active with regard to the passage of the Finance Bill through the House of Commons each year. Strict party has discipline and whips usually check the role of pressure groups in the working of the Parliament.

In Britain, the pressure groups can be seen moulding public opinion to influence the administrators. Here the campaign is either selective or saturating. While the selective campaign is directed at the individuals who are the opinion makers in their field like local journalists, churchmen, physicians, teachers etc., The saturation campaign of grass root lobby means a massive campaign through out the country and this can be done only by the vary affluent organizations. Moreover, such a form of lobbying does not pay as much as it does in the United States where only press but the radio and television are also commercial undertakings. But in Britain, the pressure groups never adopt this method because they believe in the principle that more noise, the less effective it is.

We cannot deny that the pressure perform groups a number of valuable services in the British political system. Their activity allows participators in the decision – making and they provide some technical informations to both the Parliament and administrators. Sometimes, they provide administrative assistance to the government department. At the same tine it checks any arbitrary legislation passed by the Parliament or executive. These pressure group draw people into the process of government. It may be noted that the rise and growth of pressure group politics has undermined the principle of implied representation and the doctrine of "Parliamentary sovereignty". Most of the time the will of the House is subverted by the will of the interest groups. Above all, the most importance feature of British pressure groups is that they never adopt any extra – constitutional method – coercion and bribery to meet their interests. Thus, pressure groups are the hypen which joins the ruler and the ruled in modern British political system.

4.6 ELECTIONS

A general election for all 630 seats in the House of Commons must take place by law (the Parliament Act of 1911) at least every five years. On the advice of the Prime Minister, sometimes, the monarchy may dissolve the Parliament before the expiry of the full term. Where a particular vacancy occurs in the period between general elections a bye elections is held to fill the vacancy.

For electoral purposes, the United Kingdom is divided into many constituencies. All are now single member constituencies. All the people who have attained the age of 18 have the right to vote in parliamentary election. The following persons are not eligible to register as voters – peers, infants, aliens, persons of unsound mind, felons serving a sentence of more than 12 months.

Candidate: A candidate need not be resident in the consistency for which he or she stands. All who are qualified to vote are also qualified to stand for election. Those who cannot contest are undischarged bankruts, clergymen and certain persons holding offices to profit under the crown. The House of Commons Disqualification Act 1957 includes some more in this list.

Nomination of Candidate: Each candidate must be nominated on the prescribed nomination paper, which must stage the full details about the candidate. The nomination paper must be proposed and seconded by two electors and eight other electors as assenting to the nomination. The candidate must deposit the sum of 150 pounds with the nomination paper to the returning officer. If, in the election, the candidate gets atleast one – eight of the total votes, he is entitled to have this deposit back; if not his deposit is fortified. If only one candidate is nominated, the election will be an uncontested one, the returning officer will declare that the candidate is elected. Each constituency is divided into a number of polling districts. Each polling district has a poling station.

Each polling station is in charge of a presiding officer. The ballot is secret. Every returning officer, presiding officer together with every candidate and election agent should make a declaration stating that they will maintain the secrecy of voting.

After the elections are over, the counting of votes takes place as soon as possible. It is counted at a central place of the Constituency. In addition to the returning officer ad his staff the candidate's election agents and counting agents have the right to be present at the counting. The returning officer must declare the result of the poll. The declaration is usually made publicly. After the election, the returning officer must notify the clerk of the crown of the candidate elected. Any person wishing to question the conduct or result or an election must do so by presenting an election petition to the high court in the Queen's Bench Division. If a successful candidate is found guilty, then his election is declared void.

THE SERVANTS OF THE CROWN

No government can be run without the civil servants. But the problem is that the civil service is keeping the ministers under its thumb. This type of bureaucratic government jeopardizes the liberty of ordinary citizens. Ramsay Muir said' "in our system of government, the power of bureaucracy is enormously strong, whether in administration, in legislation or in finance. It sometimes seems likely to devour its creator. Of course, it is not wholly uncontrolled but it has become the most vital and potent element in our system". The bureaucracy in Britain has profound influence in administration. A minister takes his office by virtue of his political craft, manship; but when he enters office he has practically no knowledge of the way his department functions. So the experts of the department are always at the disposal of the minister. When a minister has to give answer to a question raised in the parliament, he is supplied with all relevant information by his department. Very seldom it happens that a minister has the talent of doing much with his own judgement and thereby putting a heavy hand on the heads of the departments. At the same time, he cannot act individually without the help of his secretaries. In most of the cases the bureaucracy is suspending the excellence of their political chiefs due to their long education, training and experience.

The work of the Govt. Departments, i.e., the day–to–day work, is carried out by civil servants. Civil servants are servants of the Crown, not being holder of a political or judicial office, who are employed in a civil capacity and whose remuneration is found wholly and directly out of monies voted by Parliament. The number of civil servants so defined (Tomln Commission, 1929-31) is about 1 m. It includes Government employees in such establishments as the Royal

Ordinance factories and Royal Navy dockyards. These are the "industrial" employees; and the term "civil servants" has been used generally of the non – industrial members of the staff of the various Government departments. More than one – third of the Civil Servants are women.

4.7 THE FEATURES OF THE CIVIL SERVICE

The Basic characteristics of the British Civil Service are:

(a) Continuity, or security of tenure. Government may change; but the civil services remain as permanent employees of the crown. This system is in the direct contrast to that prevailing in the U.S.A, the "spoils" system, whereby larger number of civil servants are displaced on the victory at a Congressional election of the alternative party.

(b) Political impartiality. The civil servants do not take sides or favour one political party. They serve the minister in command and the Government as servants of the Crown, not of a political party.

(c) Anonymity: It is the minister who is responsible not only for the political decision affecting his department but also for the efficiency and conduct of his staff. In 1954, in the "Crichel Down affair" the Minister of Agriculture resigned when his departments was subject to strong criticism in Parliament as the result or arbitrary actions by his officials relating to the transfer of a citizens land. The censure of the civil servants concerned was the affair of the department, not of parliament.

i) Nevertheless, there would seem to be trend towards greater publicity in the press given to senior civil servants especially since the reorganization of the Treasury in 1863.

ii) The names of the permanent secretaries appearing before the Public Accounts Committee are frequently mentioned in Press Reports.

THE ORGANIZATION OF THE SERVICE

Members of the Civil Service were once appointed on the basis of patronage, but by the middle of the nineteenth century had become evident that a system of appointment by merit was necessary.

i) In 1853 the Northcote – Trevelyan Report on the Organization of the Permanent Civil Service suggested that two grades of person be recruited, for work of "superior intellectual" type and "purely mechanical" type.

ii) In 1855 the Civil Service Commission was established by order in Council; this method was adopted to avoid Parliamentary debate. The commission examined candidates nominated for admission by the departments.

iii) In 1870 open competitive examination were adopted as the only means of entry into Civil Service except for the Foreign Office and Home Office and certain professional posts.

iv) In 1875 the Playfair commission recommended a structure divided into classes; and subsequently the Civil Service was organized into a higher and lower division. Later they were named first and second divisions and divided into grades.

v) In 1920 a committee of the National Whitley Council (consisting of representatives of the State and employees' association), called the Reorganization Committee, made its Reports; and as a result the posts in the civil Service were classified into three major categories.

1. Administrative, recruited mainly form persons of university education;

2. Executive, recruited mainly from persons of senior secondary education.

3. Clerical, recruited mainly from persons of ordinary secondary school education.

CIVIL SERVICE CLASSES

The structure maintained until the merger of the classes in 1971, was one of the classes divided into grades :

Check Your Progress
7. Describe the features of British Civil Service.

THE ADMINISTRATIVE CLASS

This was the "senior" class of the British Civil Service.

1. It was recruited from persons of University honours degree standard; three – quarter of administrative class civil servants were guarantees.

2. The higher personnel advise ministers on policy for implementing proposals, deal with the practical matters relating to that implementing, such as the preparation of white papers and the watching of the passing of bills through parliament; and direct the work of the personnel of their departments.

THE EXECUTIVE CLASSES, GENERAL AND DEPARTMENTAL

1. The general executive class was recruited form persons of General Certificate or Education "A" level standard. Entry was by interview after obtaining two "A" level certificates (plus "O" level certificates); by examination; or by internal examination of clerical officers.

2. Executive class civil servants assisted the administrative class in day-to-day administration, e.g. supervising blocks of work done by officers of the clerical class.

THE CLERICAL CLASSES, GENERAAL AND DEPARTMENTAL

1. These were recruited form persons of "O" level G.C.E standard. The regulations issued for time to time by the Civil Service Commission gave particulars of age limits and qualifications.

2. The work done is that of a routine nature, comprising the clerical work involved in the running of a department, such as the handling of claims in accordance with rules laid down, the keeping records, the summarizing of document for senior officers.

3. There were also the ancillary clerical classes, including shorthand – typists and duplicate operators.

4. Messengerial and minor classes included messengers office cleaners, etc.,

THE DIPLOMATIC SERVICES

In 1919 the recruitment that a candidate for the foreign service should have a private income was established. In 1943 the Foreign Office and the

Diplomatic service were amalgated with the consular and commercial diplomatic services. In 1965 the Foreign Office, the common wealth service and the trade commission services were combined into a new diplomatic service. The diplomatic service has its own grade structure, corresponding those of the "Treasury" classes (i.e. the former administrative, executive and clerical classes of the home Civil Service; so called because their pay, conditions of service, and departmental allocation have been governed by the Treasury). The higher branch comprised ambassadors, counselors, consuls and assistant secretaries.

Officers form the home Civil Service departments and the Armed Forces may be seconded to or attached to the diploma service.

THE SCIENTIFIC AND SPECIALIST GROUPS

The demands of war and the subsequent peace have resulted in the increasing employment of scientists is the Civil Service as in industry. Earlier dissatisfaction of scientists in the Civil Service with the gradings and pay in the departments led to the appointment in 1943 of a committee under the chairmanship of Sir Alan Barlow in 1945 the Government published a White Paper, The Scientific Civil Service

a. Grades were created approximating in pay and those of the treasury class.

b. The scientific and specialist groups include the scientific and professionals and technical civil servants employed, e.g. in the relevant sections of the Department of Trade and Industry.

RECRUITMENT AND TRAINING

7. RECRUITMENT AND TRAINING IN THE CIVIL SERVICE

The Civil Service Commission, a body independent of ministerial and Parliamentary control, has recruited civil servants its members being appointed by the Crown of the advice of the Governments.

Check Your Progress

8. Explain the Strucure of Civil Service in UK.

a. The normal method of entry is by open competition in accordance with regulations approved by the Treasury. Competitions are by interviews or written examinations or both.

Candidates for the administrative class have been subjected to extended tests, which used to take the form of a "country-house week-end" based on the method used for selecting officers for the Army.

The emphasis for candidates for the higher posts has been on "liberal" studies.

b. Training after entry was recommended by the Assheton Committee, which was set up in 1943. A Director of Training was appointed.

1. Training is organized for the various departments by training officers and instructors, ranging from instructions to recruits to refresher courses for experienced personnel. Day release schemes enable young civil servants to continue their studies at technical colleges. The departmental training is co-ordinated by the training and education division of the Treasury.

2. More experienced officers are transferred from branch to branch (but rarely from department to department) to make themselves more efficient as administrators. Courses are provided in case studies, programmed learning and other devices; and in economic and social studies. Civil servants have attended courses at the administrative Staff College at Henley-on-Thames, where intensive courses of study have been provided for "top" people from commerce, industry and the professions.

3. Contact with personnel in industry is encouraged.

4. In 1963 a Center of Administrative Studies was opened at Regent's Part of the higher grades. Three weeks' courses are run for the recruits and intensive three months' courses for civil servants of two or three years' experience. In June 1970, a Civil Service College was opened with Headquarters at Sunningdale Park, with other centers in London and Edinburgh. Management training is thus now centralized.

PROMOTION FROM CLASS TO CLASS

Promotion is by examinations open to serving members only; partly by recommendation by the departmental chief. Promotion to the administrative class form the other classes required the approval of the Treasury. Promotion form the main grades in the administrative class (assistant principal, principal, assistant secretary) to the higher posts (principal establishment officer, principal

finance officer, deputy secretary, permanent secretary) required the approval of the Prime Minister.

CRITICISMS OF THE BRITISH CIVIL SERVICE

The major criticisms have been as follows;

RECRUITMENT

The great majority of the administrative class civil servants came from the older universities, Oxford and Cambridge, and there is a bias in favour of "cultural" or "liberal" studies as against technological qualifications.

1. It is true that the scientists or technologist is by no means lacking in "culture"; but the nature of the administrative class officer's work demands a broadly-based education.

2. Such a discipline as that required for a university degree in some "humanistic" 'study suggests that a person can use his mental skill and ability to mix well with his fellows in the field of public administration.

3. Criticisms of the older universities, like that of the House of Lords, often rest on envy and resentment.

TRAINING

This, it has been suggested is too narrow. There should be greater contact with industry.

1. Since the Report of the Assheton Committee on the Training of Civil Servants (1944), there has been less ground for this criticism.

2. The suggestion that there should be more movement of personnel between industry and the Civil Service as in the USA must take account of the fact that industry in Britain has not the relative prestige accorded to it in the USA. The seconding of economics and statisticians to the Civil Service during the Second World War, the tendency to appoint industrially and professionally qualified people to permanent posts, and particularly the co-ordination with industry in the operations of the some Departments have broken down the isolationist attitude of the Civil Service.

Check Your Progress

9. Examine the Criticism of Civil Service.

3. Training in running a country can be obtained only be attempting to run the country; and progress must necessarily be made only from established

principles and modes of procedure. Too rapid a change to new methods can result in a partial breakdown of administration.

4. The division into classes was held by some to reflect a structure of education, which was no longer valid; the structure of the Civil Service should be modernized.

4.8 THE FULTON COMMITTEE

In 1965 the House of Commons Committee on Estimates published a report on recruitment for the Civil Service.

The Fulton Committee published its report in June 1968. Its recommendations included:

1. The abolition of the system of "classes", which was to be replaced by a single unified grading structure, the grading of jobs to be determined by a process of job-elevation. The Government accepted this proposal.

2. The establishment of a Civil Service Department which would absorb the Pay and Management group of the Treasury and the Civil Service Commission.

3. The creation of a Civil Service College to be the center of training and research in the Civil Service. The Government accepted the broad lines of the recommendation.

4. Other recommendations related to recruitment and career development, the terms of service, the desirability of encouraging greater mobility between the Civil Service and other employment, and the "hiving off" of some areas of Civil Service work to public boards or corporations.

5. The committee proposed ways of improving efficiency in Government Departments.

Most of the recommendations of Fulton Committee implemented by the Government and the present day civil service focusses on to introduce private management techniques in administration.

SUMMARY

The British constitution gives importance to Rule of Law. The organization and pattern of Justice is analysed in detail in this unit. Judiciary and its role is essential because the rights of the people is protected by Judiciary. It is interesting to note what were different types of law in existence and used in cases. The classification of Local Govt. in U.K. and their functions were discussed in this unit. The two party system functions well in England. The two parties have totally different ideologies. Both the parties aim at winning power but through democratic means. Equally the pressure groups play a inevitable role in British Political System. On the basis of 1911 Parliament Act elections are conducted once in five years. The Political leaders, need the help of Public servants in administration. Public service in England has many changes because of the number of committees appointed from '1853 onwards. The general tendency is they want only meritorious individuals for public service. Whitley council resolve the conflict between the government and public servants. Without the public servants there can not be continuity in administration.

KEY WORDS

Rule of Law - Country Courts - Privy Council - Treasury classes - The whip - Borough - Country – Bi-Party system - Floor crossing - Shadow Cabinet - Patronage System - Political Impartiality - Treasury class

ANSWER TO CHECK YOUR PROGRESS

For Question No 1	Refer Section 4.1
For Question No 2	Refer Section 4.2
For Question No 3	Refer Section 4.4
For Question No 4	Refer Section 4.4
For Question No 5	Refer Section 4.5
For Question No 6	Refer Section 4.5
For Question No 7	Refer Section 4.7
For Question No 8	Refer Section 4.7
For Question No 9	Refer Section 4.7

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MODEL QUESTIONS

1. Explain the judicial set up of England.
2. Bringout the structure of Local Govt in England.
3. Explain the party system of England.
4. Analyse the characteristic features of Civil Service in UK.

UNIT - 5

GOVERNMENT OF THE UNITED STATES OF AMERICA – FEATURES OF THE CONSTITUTION – EXECUTIVE: PRESIDENT - CABINET

INTRODUCTION

In the year 1492 America was discovered by Columbus. Britain has established their colonies in North America. There were thirteen such colonies during the 18th century. Most of the inhabitants are British immigrants. Some of them came from France, Sweden, Norway and other places. In course of time these colonies fought against Britain and became independent. American political system emerged in 1789, with George Washington as the first President. This unit describes the Constitutional Development of U.S.A. The features as well as amendment of American Constitution is given. A unique feature of a federation is the scheme of division of powers is also discussed. The American President is one of the powerful president in the world. American political system has totally given the Executive powers to the President of America. He is enjoying more powers and he is independent of legislature. This unit explains the qualifications, mode of election, powers and functions of President are discussed. The office of Vice President, the cabinet in the Presidential system is also discussed.

OBJECTIVES

1. To know the position of USA before independence.
2. To learn the features of American Constitution.
3. To know about the American President's qualification election method and his powers.
4. To learn the functions and powers of Vice-President and Cabinet.

STRUCTURE

Land and People

Political Culture

Basic Features of the Constitution of America

Federalism for USA

Powers of Federal Government

The President

Qualifications, Emolument, Tenure, Mode of Election

Succession

Impeachment of President

Powers and functions of President

Presidential Cabinet

Executive Departments

Summary

Key Words

Answer to Check Your Progress

Model Questions

5.1 LAND AND PEOPLE

The American political system deserves an in-depth study for a variety of reasons. It is not due to America's being the most advanced nation of the democratic world, nor should its reason be traced in her being the most powerful country of the globe. Rather its reasons should be discovered in several momentous developments like the beginning of the documentary constitutionalism, political and national integration, irresistible growth toward democratization, freedom of the press, an independent judiciary etc. Moreover, American constitutional system, like its English counterpart has adapted itself to changing conditions. As a result of these, "a heterogeneous restless people have developed a continent, built a nation, achieved a standard of living the highest of world has ever known, given the masses greater opportunities educationally and economically than any other people, preserved the great freedoms, renounced imperialism, successfully fought two world wars and has today assumed international leadership and international obligations unparalleled in history". (E.S.Griffith : The American System of Government). The American writers proudly proclaim that these achievements of the American people are the valuable gifts we offer to the people of other nations who "seek our help in establishing available democratic form of government" (Ferguson and Mc Henry)

Today America is the foremost nation of the western hemisphere in population and resources and is composed of 50 states, in a federal republic. Except Alsaka and Hawaii, the other 48 states extending from the Atlantic in the east to the Pacific Ocean in the west are territorially contiguous. On the north it is bordered by Canada and on the south by Mexico and the Gulf of Mexico. Alaska which became the 49th state in 1949 occupies the north western and the north American continent and Hawaii which became the 50th state is 1959 is situated midway between the Pacific coast of America and Japan. The distance between the north western tip of main land America and Alaska is 500 miles. In contrast, Alaska is separated from Siberia by only about 50 miles of Bering Strait. Apart from these 50 states, there are some outlying Territories such as Puerto Rico, Virgin Island, French Guam, Panama Canal Zone etc. The total area of America is 3.5 million sq. miles.

The total population of America was around 275.6 million in 2001 and it composed of the original Red Indians and immigrants both white and black. Isolation from the European affairs, made possible by 3000 miles of the Atlantic Ocean separating America from Europe, was an important factor in the nation's early development.

Another shaping factor was immigration that had crossed the 3.5 crore mark before the introduction of the quota system in 1921. The motives that brought the immigrants were similar to those of the early settlers and widely varied ethnic strains have very much contributed to the formation of a distinctive national culture. Since the original 13 colonies were ruled by the English people, the constitutional, institutional and cultural life of the native Americans was, therefore, predominantly Anglo-Saxon in character and they developed, unlike the Spaniards and the French, a sense of tolerance of non-English Protestant denominations.

Two remarkable features-growth and expansion from the original 13 colonies to the 50 states and an enviable unity in the midst of great diversity emerging from the peculiarly American culture-are clearly discernible in the development of the American political system. Various stocks of people-the Dutch, Spanish, French, English and others-who immigrated to America "had become so extensively mixed through intermarriage that they could properly be called a "new people". "American" as distinguished from "British".

5.2 POLITICAL CULTURE

Political culture of a nation refers to the basic attitudes and orientations of its people toward their political system. A study of the American political culture shows that the people have unflinching faith in the principles and norms of democracy, not only as a form of government but also as a way of life. They give full support to their present political system.

Competitiveness for individual and material success is the hall-mark of American national character and this trait shapes their political culture. The Americans are neither thrifty life Scots, not quick – tempered like the Italians, nor radical like the Latin Americans, nor conservative like the English, nor emotional like the French. It, however, does not mean that the Americans have no culture and habits of their own. Monsma has pinpointed some of the major ingredients of the political culture of the American people.

They are:

1. The Americans have faith in 'rags to rich' path. They do not believe in socialism which they consider as a sure road to slavery. They have unshakable faith in individualism and therefore they think in terms of individual welfare and not of special group or class.

2. Materialism governs the life of the Americans and there is no place for spiritual and social values in the U.S. Their success is measured in terms of material gain a man makes for himself.

3. Self-interest is the basis of American way of thinking. Its instances can be found in America's involvement in global wars in the name of 'defending democracy in the world'.

4. The Americans have faith in secularism. Religion, to them, is a private affair and therefore man has the freedom to follow or not to follow any religion.

5. Optimism may be described as almost a national religion of the Americans. They attribute failure not to fat, but to some faults in the way of doing. They believe in 'work is worship'.

6. Though racism still prevails, the Americans do not cultivate or maintain their racial prejudices in quite unabashed manner.

7. Finally there is the trait of self-consciousness. The American love everything American" and detest what is 'un-American'. This explains the establishment of a standing committee on "Un-American Activities in the American Congress.

In American one can find an irresistible growth toward a liberal democracy during the last 225 years and from this pattern of democracy five major principles have emerged. They are :

POPULAR SOVEREIGNTY

The idea is that the government belongs to the people and not to any privileged few or to any single individual. All the members of the community have the right to elect their leaders. The power of the people is not nominal, but genuine and actual.

POLITICAL EQUALITY

American democracy rests not only on economic and social equality, but also on political equality. The right to vote of the poor is equal to that of the rich.

EFFECTIVE CHOICE

The people have alternatives to chose. There is competitive party system and the people are to give their verdict in favour either of the Democratic party or the Republican party.

CONSULTATION AND ACCOUNTABILITY

American people have come to expect periodic explanations of the policies adopted by the government. Then only way they express their opinions in the light of which the national policies should be framed and implemented.

MAJORITY RULE VIS-À-VIS MINORITY RIGHT

Americans have taken for granted that although the majority has a right to rule it cannot suppress the rights of the minorities. If a minority feels offended, he can go to the court to seek remedy to his grievances. It is due to this that the Negroes are enjoying a better life in U.S. than in South Africa.

Check Your Progress

1. Describe the Political Culture of USA.

Despite the fact the democracy has its irresistible development in America, there are two black spots which are also growing along with democracy

in the American political system. The one is that money dominates all walks of life so much so that money worship may be described as the religion of the American people. Second and more important than the first is the obsession of the American rulers to combat the specter of communism. A mad hunt for crushing communism in the form of McCarthyism has taken away much of the salt of American democracy.

5.3 BASIC FEATURES OF THE CONSTITUTION OF AMERICA

The Constitution of the United States of America was moulded by the exigencies of time. It was the desire and need for freedom of the thirteen colonies which led to the evolution of the federation. These colonies situated at the Atlantic side and largely peopled by English settlers fought for freedom from the yoke of British imperialism and declared independence on July 4, 1776. A constitution for the independent colonies was drawn up by 55 delegates representing twelve of the thirteen colonies. The only colony which was not represented was Rhode Island. This Constitution created a confederation. Since this confederation did not serve the purpose for which it was established, the states wanted to remodel it. Consequently in 1787 a constitutional convention called at Philadephia drafted a new Constitution for the thirteen colonies. After receiving the ratification of the required nine colonies, it came into force on March 4, 1789.

The Constitution of the United States is the briefest and the smallest ever produced in modern times. It contains a Preamble and seven Articles running to about 9 pages and the amendments made to it so far. Though it is brief and short, it has successfully fulfilled the complex and various requirements of the people of the U.S.A. over a period of more than 225 years.

The American Constitution is very rigid. It can be amended only by a complicated nature of amendment procedure (For details refer to mode of amendment given in the latter part of this lesson).

Another feature of the Constitution of America is that it is federal in character. The first constitution of America created a confederation, whereas the Constitution of 1789 makes it a federation. The difference between a confederation and federation is that the former is a loose form of association of states and the latter is an association of states in its strong form. We can cite

the Germanic confederation of 1874. The Swiss confederation upto 1874 is another example of a confederation which is formed out of a temporary alliance concluded for specific purpose-political or economic. Unlike these confederations a federation is typical union of states in which the federating units lose their independent character, retaining only some powers in their hands as separate states, and transferring all other powers into the hands of a superior authority or central government, which thus becomes superior in all external affairs.

The U.S.A. is one such federation established as a permanent and irrevocable Union. As a federation of 50 states, it fulfills all the requirements of a federal polity; in the first place, it has a written Constitution which is rigid in character. Secondly the constitutions of the federation is considered superior to the constitutions and the laws of the federating units and the laws passed by the Congress itself. Neither the centre nor the states can alter the scheme of division of powers. The supremacy of the constitution is upheld by the power of judicial review given in the power of declaring a law null and void if the same is repugnant to the constitutional provisions. This is a very important feature of the constitution. Thirdly, the Constitution makes a clear division of powers between the two sets of governments namely, federal government and state governments vesting the residuary powers with the latter. Fourthly, in the U.S.A. every citizen is granted double citizenship, i.e., one for the nation and the other for the state to which they belong.

Two other features of a federation are the presence of an independent judiciary and a second chamber based on elective principle. The judiciary of U.S.A. is established in such a way that it can function above the din and dust of political controversy and plays a powerful role in safeguarding the rights of this states and the citizens. The Senate which is the second chamber is not only equally represented but also based on elective principle.

The Constitution is based on the principle of Separation of Powers. The Constitution clearly states that all legislative, executive and judicial powers are vested in the Congress, the President and the Supreme Court respectively. There is no other Constitution in which the demarcation of the three wings of the government is so clear. In America no wing of the government is made dependent upon the other. The framers of the constitution were profoundly

impressed by the theory of 'Separation of Powers' as propounded by Montesquieu, in his "The Spirit of Laws" stated that if all three powers of the government viz., legislative, executive and judicial are concentrated in the hands of one individual, the citizens cannot enjoy liberty. In their attempt to make the three wings as separate as possible the framers of the constitution made each one of them independent from each others. For example, the President has a fixed term and is not responsible to the Congress. The legislature is independent of the executive for the Congress cannot be prorogued or dissolved by the President. The Federal Judiciary is also independent of the other two branches of the government since no judge of the Supreme court can be removed from the office except by a very difficult procedure of impeachment. If the three wings of the government are made fully independent of each other the governmental machinery cannot function smoothly. Therefore the framers of the constitution introduced checks and balances as a measure to establish relation between the three wings in such a way that one controls the other. For example, the executive is controlled by the Senate in the matter of making appointments and concluding treaties etc; the Congress is controlled by the executive by its power of giving assent to the bills passed by it. Both the Congress and the President have control over judiciary through their power of appointment and removal of judges. The Supreme Court has control over the executive and the legislature by its power of judicial review.

Another basic feature of the American Constitution is that it emphasizes the theory of popular sovereignty. The people are the ultimate source of authority. Consistent with the theory of popular sovereignty it is provided that the head of the state is elected by the people (through an electoral college) and from them he derives the powers through the Constitution. Hence the state is a republic.

The Constitution also provides for a Presidential form of government. The head of the state is the President, who is elected indirectly as far as theory is concerned and directly by the people in reality. Neither does he belong to the Congress nor does he attend its sessions and initiate policies directly. Hence the state is a republic.

The Constitution also provides for a Presidential form of government. The head of the state is the President, who is elected indirectly as far as theory

Check Your Progress

2. What are the basic features of US Constitution?

is concerned and directly by the people in reality. Neither does he belong to the Congress nor does he attend its sessions and initiate policies directly. He enjoys a fixed term of office before the expiry of which he cannot be removed except by impeachment. It is he who makes or unmakes his cabinet which is neither individually nor collectively responsible to the legislature.

MODE OF AMENDMENT

Amendment means altering or repeating a provision of the constitution in order to fulfill the aspiration of the people according to the changing circumstances. There are several methods of amendment. In some countries amendments are made by the legislature. In Britain there is no distinction between ordinary law and Constitutional law. The Constitution is amended by the Parliament in the way as an ordinary law is passed with simple majority.

The Constitution of the U.S.A. is rigid. The framers of the constitution have introduced rigidity in the Constitution with a view to avoid all the possibilities of capricious change in the Constitution. Article V of the Constitution lays down the procedure for its amendment. There are two methods by which the amendments may be carried. They are as follows:

1. An amendment may be proposed by two-thirds majority in each House of the Congress and ratified by three-fourths of the total number of states. It may be done either by the state legislatures or by special conventions held for the purpose in the states.

2. Proposals for amending the Constitution may be initiated by the states themselves. If two thirds of the state legislatures apply to the Congress for amending the constitution, the Congress calls a constitutional convention which proposes the amendment on the basis of the recommendation made by the states. Such a proposal must be ratified by three-fourths of the states. Here also the mode of ratification is to be determined by the Congress. It may be done either by the state legislatures or by, special conventions. All amendments have been proposed by the Congress and all, except the 21st amendment, have been ratified by state legislatures.

In the original constitution there was no time limit prescribed for ratifying a constitutional amendment. As a result, one state, for example, took 80 years for ratifying an amendment. In order to avoid such inordinate delay, the

Congress is now empowered to place a time limit on ratification by its resolution. According to 18th, 20th and 21st amendments, amendments would be lost if not ratified by the required number of states within seven years. Another feature of the process of amendment is that if a state ratifies an amendment it cannot go back. But if it has rejected once, it can ratify it afterwards.

The constitution is silent as to whether the two-third majority prescribed for Congress to propose the amendment means two-third majority of the total membership of the House or of members present and voting. The convention followed is two-third majority of members present and voting.

The provisions for amending the Constitution is subject to two limitations. First of all, the right of every state to equal representation on the Senate cannot be taken away without the consent of the state concerned. Secondly, no state can be split up into two or any stage merged without the prior consent of the legislature of the state concerned.

There have been twenty-six formal amendments of the American Constitution upto date. Of these, the first ten, which are collectively referred to as Bill of Rights, were adopted almost immediately after the ratification of the constitution. The first ten amendments were made in 1791. The significance of these early amendments is obvious. They guarantee the liberty of the individual against oppressive or tyrannous government. The eleventh and twelfth amendments which were made in 1798 and in 1804 respectively were also in relation with the Bill of Rights. The second group includes the thirteenth amendment (1865) prohibiting slavery, the fourteenth (1868) and the fifteenth (1807) amendments securing equal rights of citizenship in all stages and all these "register the principal constitutional results of the Civil War". The third and last group include the remaining amendments. The sixteenth amendment (1913) empowers the Congress to levy 'collect direct taxes. The seventeenth amendment (1913) makes the election of Senators direct and popular. The eighteenth amendment (1919) prohibited the sale of intoxicating liquor in the United States. The nineteenth amendment (1929) extends to women the right to vote. The twentieth amendment (1933) fixes new dates on which the term of office of the President, Vice-President, Senators and Congressmen begin and end. The twenty-first amendment (1951) limits the President to two terms of office. The twenty-third amendment (April 1961) gives the people of the

District of Columbia the right to vote for the President and the Vice President. The twenty-fourth amendment outlaws all taxes including poll taxes which affect the right to vote. The twenty-fifth amendment enables the President to choose a Vice President with the assent of the Congress if the office of the Vice President with the assent of the Congress if the office of the Vice President becomes vacant. The twenty-sixth amendment establishes uniform age of 18 for voting rights throughout the country.

GROWTH OF THE CONSTITUTION

During the last 225 years the Constitution has grown enormously on account of the application of the doctrine of implied powers, Constitutional amendments, federal grants-in-aid and the role of powerful Presidents.

The doctrine of implied powers as enunciated by Chief Justice Marshall provides that the constitution not only enumerated certain powers for the centre, but also gave all those powers which are implied in the enumerated ones. The Supreme Court by the liberal application of this doctrine has helped the centre to strengthen its position and increase its powers. For example, through the powers of the Congress to impose and collect taxes and duties, the Congress got the authority to establish and control exclusively the Central Bank of the United States. This is how the federal government has acquired many of its powers which are not enumerated by the original constitution. These powers are interpreted as implied in the enumerated ones. All these have led to the growth of constitution.

The 26 amendments made to the Constitution so far have also been responsible for the growth of the constitution. For example it is according to the fifteenth, amendment that the Supreme Court came to possess the power of judicial review over the state laws.

Another factor which contributed to the concentration of powers at the centre is the federal grants-in-aids. Granst-in-aid are the payment made by the federal government to the states and local governments for the support of welfare activities administered by states and local bodies. Since states are given financial aids by the federal government, it goes without saying that the federal government can exercise more control over the states.

Check Your Progress

3. Explain the process of amendment.

Finally, the Presidents like Lincoln, Washington, Roosevelt, Wilson, Kennedy have taken actions even without constitutional justification. For example, Rossevelt's New Deal policy had widened the control of federal government over subjects which were originally under the jurisdiction of the states. Thus, the role played by the powerful presidents also, to some extent, has made the federal government stronger in course of time.

5.4 FEDERALISM IN THE U.S.A.

The American federal system is a product of certain geographical, historical and ethnic factors. The people of different races have, in the course of time, migrated to this country and developed a sense of common nationhood. Hence, the U.S. is called a racial melting point'. The federation came into being with the merger of 13 principalities which had already passed through a period of sovereign statehood. The passionate attachment of these colonies to their individual independence made them afraid of granting of central authority an executive power that might deprive them or their rights. It is owing to this fact that the Articles of the Confederation of 1781 under which the U.S. was governed till the promulgation of the new Constitution in 1789, established a loose confederation with a very weak central government. The federal system came into being when the Philadelphia Convention met in 1787 and drew up a constitution. Its primary object was to secure the rights of the states, while at the same time, gaining advantages of common action. Hence, the constitution carefully enumerates the powers of the federal government, leaving the remaining powers to the states.

A true federal systems pre-supposes three requirements, a written and rigid constitution, division of powers between the centre and the units and an independent and impartial judiciary to resolve disputes between the centre and the units or among the units themselves and the American Constitution is a written and rigid one. It contains about 400 words and thus appears to be the briefest Constitution. Since it requires a special procedure for its amendment, it is a rigid Constitution. Further, the Constitution has been made the supreme law of the land.

In the second place, the American Constitution provides for the division of powers between the central government and the governments of the units called the states. In the division of powers, the constitution enumerates the

powers of the central government (Federal Government) and leaves the rest to the units. The position of the units vis-à-vis the centre remains strong if this method of distribution of powers is followed and it is owing to this reason that the position of the American states is stronger than that of the provinces of Canada or the states of India where the powers of the units are enumerated.

Section 8 or Article 1 of the Constitution enumerates the following powers of the federal government.

5.5 POWERS OF FEDERAL GOVERNMENT

1. To tax and borrow money.
2. To regulate inter-state and foreign commerce.
3. To conduct foreign relations.
4. To maintain defence forces.
5. To declare war.
6. To coin money.
7. To provide for post offices and postal records.
8. To grant copyrights and patents.
9. To establish uniform law on bankrupcy.
10. To punish piracies and felonies and offences against international law.
11. To punish counterfeiting.
12. To provide and maintain navy.
13. To constitute inferior to the Supreme Court.
14. To make rules for the government and regulation of land and naval forces.
15. To provide for calling forth the militia to execute the laws of the Union and suppress insurrections.

16. To administer the territory of the federal government.

17. To provide for organizing arming and disciplining the military.

All the remaining powers the residuary powers belong to the states. By virtue of Amendment X to the Constitution, the powers not delegated to the federal government by the Constitution and prohibited by it to the states are reserved to the states.

The Constitution not only enumerates the powers of the federal government, but imposes certain restrictions both on the federal government and the state government. Section 9 of Article 1 of the Constitution prohibits the federal government from suspending the right of habeas corpus, from passing ex-post facto laws, from granting titles of nobility, from passing laws affecting religious beliefs of the people in any way and abridging freedom of speech and of press. Likewise, states are forbidden from making any alliance or treaty with any foreign country, from coinage and maintaining armies.

Apart from the above powers, expressly delegated, the federal government has acquired certain powers such as school, security legislations, regulations of inter-state business and labour, banking and credit etc. through the Doctrine of Implied Powers enunciated by the Supreme Court.

Besides there are certain powers which are common both to the federal and the state governments. They are called concurrent powers. Both states and federal government may tax and borrow, set standards of weights and measures, establish and maintain courts, take away property for public purpose, etc.

The last requirement of a federal system, in the case of the U.S., is fulfilled by the Supreme Court. It is the final interpreter of law and resolves disputes between the centre and the states. Section 2 of Article III of the constitution provides that in all controversies to which the federal government is a party in controversies between two or more states, between a state and a citizen of another state, between citizens of different states and between a state or a citizen and a foreign state of citizen the Supreme Court has original jurisdiction.

To sum up, the following points may be noted. First, American federal system is a product of particular circumstances, Reed West very aptly remarks

Check Your Progress

4. What is Federalism?
5. Explain the power of Federal Government.

that the real reason for the adoption of federal system was the necessity of reconciling the local feelings and jealousies of the 13 independent communities. Second, American federal system provides autonomy to the units so much that it gives them the title of 'states' and leaves to them the residuary powers. Third, the powers of the states are undefined, but not unlimited. Fourth, all the states possess equal rights and equal representation in the federal second chamber irrespective of their size of population.

In addition the federal system of the U.S. highlights some more ideal features as well. First, the federal government is under a constitutional obligation to respect the geographical unity and territorial integrity of the states and thus no state can be deprived of its name or territory without its consent. Second, it is obligatory on the national government to see that in every state republican government is established. Third, the national government should defend and protect every state from external invasion. In return, the state government should do three things: (i) They make rules and conduct elections to both Houses of the Congress and manage the election of the President, (ii) They are required to play their part in matters of constitutional amendments, (iii) They must not do anything detrimental to the integrity of American Union. The civil war (1861 -65) proved that the American Union is "an indestructible Union of indestructible states".

CENTRIPETAL TRENDS

Undoubtedly, the U.S. furnishes a brilliant instance of a federation; but its evaluation in the present form reveals that much has now changed from what was originally designed. Growth of centralism is feature in all the modern federation and America is no exception to it. If the trend of centralism in America is not slowed down the states may, in near future, be "operating primarily as field districts or federal department and dependent upon the federal treasury for their support". (E.S.Griffith).

Several reasons may be cited for this phenomenon. First the political, econmic and social changes have played their important part. The expansion of territory, growth of population, increasing complexity of social and economic organisation, achievements in the fields of science and technology etc. have all transformed America from the position of a small and isolated nation with simple and agricultural economy to that of the most highly industrialised and

the most powerful nation of the world. Second, the civil war gave a strong verdict against the trend of separation and the victory of the federal government and the subsequently reconstruction "left a heritage of expanded federal powers never subsequently to be surrendered." Third, the Supreme Court has enormously increased the authority of the federal government by laying down the Doctrine of Implied Powers. Fourth, by the system of grants-in-aid the federal government has immensely increased its authority at the expense of the autonomy of the states. He who pays the piper calls the tune and so the state governments are obliged to act according to the instruction of the federal government. Grants-in-aid offer a middle ground between direct federal assumption of certain state and local functions and their continuation under exclusive state and local financing. Fifth there is the fear of global war in general and that of the spectre of communism in particular. Since the state governments cannot defend themselves against the onslaught of any external power and since the fear of communism pervades, naturally the upper hand of the national government has gained excessive weight. Sixth, the economic depression of the 1930s offered vast scope for the extension of federal authority. As the crisis warranted unified and rigorous national action, the federal government naturally seized the opportunity to expand its power. Last, there is the factor of people's confidence in the national government. The centre has fulfilled its promises and rendered essential service to the people in a way that the bonds of local loyalty have become weak and, as a result, the national government "is almost a model of perfection when compared to some state capitals which are graft-ridden, inefficient, and unable to provide the services that the people expect.

It is obvious that no one can deny the fact of centralism in American federal system. The national government has taken an increasing share of national resources for the traditional function of defence, regulation of national economy and collection of taxes. This compelled Drummond to write in sheer pessimism that the American federalism 'no longer exists and has no more chance of being brought back into existence than an apple pie can be put back on the apple cart. However, this extreme opinion needs revaluation and it seems that a rational view is given by Griffith when he observes it would appear to be open to the federal government to dictate or atleast dominate policy through the use of conditional subsidies. Despite the elements of centralism in America, the fact remains that the states have also developed their areas of authority. They will discharge their duties by rendering essential services to the people such as control of election

machinery, administration of police, provision for education, implementation of civil and criminal law etc. The study of the state government will reveal to a student of Political Science that inspite of the vast growth of activity at the centre the states have not lost the character of being "the pivot around which the entire American political system revolves".

5.6 PRESIDENT

Article II of the Constitution of the U.S.A. provides for the office of the President and vests all the executive powers in his hands. The American President is a single executive and is independent of the legislature. He is made supreme in the executive sphere, making due allowance for the devices of internal checks and balances. Neither is he responsible to the legislature nor is he bound by the advice of his cabinet. His powers are so enormous, wide and over-whelming that he has been described as the foremost ruler in the world.

5.7 QUALIFICATIONS, EMOLUMENTS, TENURE, MODE OF ELECTION

The constitution requires that a candidate for the Presidency shall be a natural born citizen, tha he must have attained the age of thirty five years, and must have been for fourteen years a resident of the United States. In practice the candidates for Presidency are drawn from among the Senators, Governors of States, Cabinet secretaries or important officials in the previous administration.

The salary and other emoluments of the President are fixed by the Congress. They cannot, however, be increased or diminished during his term of office.

The constitution lays down that the President shall hold office for a term of four years. The original constitution did not restrict the eligibility of a President for re-election, George Washington the first President, set a two-term custom and it was followed for a century and a half. This convention was violated when President Roosevelt was re-elected for the third and fourth term in 1940 and 1944. Consequently, the 22nd amendment was passed, according to which no person can be elected President more than twice.

The President is elected constitutionally by an electroal college of as many "Presidential Electors' as the numbers of members of both House of the Congress. Each of the states possesses as many Presidential Electors as it has Senators and Representatives in the Congress. Although there is no representation in the Congress for the District of Columbia, the 23rd amendment the electoral college. Thus including the seats of the District of Columbia the total number of electors constituting the electoral college in 538. The electors were originally elected by the state legislatures; but now they are elected directly by the people. The bare majority of the total 538 electoral votes i.e., 270 electoral votes is needed to win the Presidency. On account of the development of party system the choice of the President has become almost direct in practice. The victory of a particular party in the election of the Presidential Electors means the victory of the party's presidential candidate. This is because under the strict party discipline the electors exercise their votes only in favour of the Presidential candidate fielded by their party. Thus indirect election envisaged by the original constitution has become almost direct in practice. The Presidential candidate who gets the majority of the electoral votes is declared elected. This does not mean that the candidate elected should always carry with him the majority of the popular votes. For instance. Abraham Lincoln (1860); James A Garflied (1880), Grover Cleveland (1884), Woodrow Wilson (1912 & 1916), Harry Truman (1944), John F. Kennedy (1960) and Richard Nixon (1968) all these Presidents failed to get a majority of the total popular votes, but were Presidents because all had won a majority of the electoral votes.

Sometimes it may so happen that even though a candidate has secured a majority of popular votes he may fail to secure the majority of electoral votes and lose the election. For instance in 1824. Andrew Jackson achieved a margin of more than 37,000 popular votes John Quincy Adams, but not enough electoral votes to gain the Presidency. In 1888 Grover Cleveland, a Democrat, got 90,000 more popular votes than Benjamin Harrison a Republican. Yet, Harrison, became President because he won a majority of electoral votes.

The American political system moves according to the calendar pattern. Presidential elections are held in the month of November of every leap year. The actual election campaign is started by the political parties many months in advance. Months before the date of Presidential election, the major political parties hold their national conventions and nominate their Presidential

candidates. The state party organisations nominate their own candidates for the Presidential electors put by up the political party of their choice. The ballot papers are so printed that by one cross a voter can vote for the whole list of Presidential electors put up by a party. Normally, the party which secures a plurality of the popular votes in any state is entitled to all the electoral of the state for President and Vice-President. The victory of a particular party in the election of Presidential electors means the election of the party's candidate to the Presidentship, The electors automatically vote for their party's nominee since no electors dare break faith with the party which nominated them. These electors meet in the capital of each state on the first Monday after the second Wednesday in December and record their votes for the Presidential and Vice-Presidential candidates. This is only a constitutional formality and the result of Presidential election is known soon after the election of the Presidential electors is over.

On the 6th January the votes are counted at a joint meeting of the Congress. The candidate who secures the absolute majority is declared elected. If no candidate secures the absolute majority the House of Representatives selects one of the three highest on the list to serve as President. In such a case, each state will have one vote. A majority of the members of each delegation determines how the state's single vote will be cast. If the members of a delegation are evenly divided then that state's one vote is not counted. A majority of all the states is required for election. The District of Columbia's non-voting delegate is not entitled to vote. If the attempt also fails, the Vice-President will act as the president until a new President is elected in accordance with the 20th amendment.

5.8 SUCCESSION

An emergency arises in the Presidency when the President dies in office or is incapacitated by illness, the Constitution states that the Vice-President shall succeed to the Presidency upon the removal, death, resignation, or inability of the President to discharge his duties and authorises the Congress to provide by law for the succession in the event that the Vice - President is unable to carry on the office. Two questions arise under these provisions : Who determines whether the president is unable to discharge his duties? Who succeeds in the event both the President and the Vice-President die, resign or are removed? The twenty-fifth amendment, adopted in 1967, answers these questions. This amendment provides that the President informs the Speaker and the President pro tempore of the Senate that he is unable to perform the duties of the Presidency;

Check Your Progress

6. Explain the Qualifications for President of USA.

in that event the Vice-President would serve as acting President until the President sends a written declaration to the Speaker and the Senate leader. The amendment also authorises the Vice-President whenever there is a majority of the cabinet or a majority of another body prescribed by the congress to declare the President to be disabled. The amendment also provides that a vacancy in the office of Vice - President may be filled by a person nominated by the President and confirmed by a majority vote of both Houses of Congress. If the officers of both President and Vice -President fall vacant, the Speaker of the House of Representatives shall act as President. Next in the line of succession are the President pro tempore of the Senate and the cabinet members.

5.9 IMPEACHMENT OF PRESIDENT

The President is irremovable during the term of his office. According to Section 4 of Article he can be removed by means of impeachment on grounds of treason, bribery or other such high crimes and misdemeanours. The House of Representatives adopts by resolution articles of impeachment charging the President with certain high crimes and chooses leaders to direct the prosecution before the Senate which acts as a judicial tribunal for impeachment. The President is then examined by the Senate. The Chief justice of the Supreme Court presides over the meeting of the Senate in this process. The Senate may convict the President by two-thirds majority of the members present and voting. The penalty cannot extend more than the removal of the President from office and disqualification to hold any office of trust and responsibility under United States. In 1868, President Johnson was subjected to the process of impeachment, but could not be carried through for want of required majority in the Senate. In the recent past, President Nixon escaped a possible impeachment by resigning from his offices when he was involved in the Watergate scandal. But for the impeachment the President of America is immune from the jurisdiction of ordinary courts. President Clinton faced the trial of impeachment but it was defeated.

5.10 POWERS AND FUNCTIONS OF PRESIDENT

An outstanding feature of the American constitutional development has been the growth of the power and prestige of the Presidency. Article II Sec. 2 of the constitution envisages the power of the President. He has assumed powers not only from the constitution but also through judicial decisions and other factors

like wars, internal crisis, the complexity of the modern government and rise of the United States to a commanding position in world politics.

The powers that the President now exercises can be divided into two broad categories - those chiefly executive in character and those arising out of the legislative process. The executive powers of the President may further be divided under the following headings : (1) supervision over the administrative agencies of the federal government. (2) enforcement of the laws, (3) to make appointments and removals, (4) granting of pardons (5) to conduct diplomatic relations and negotiate treaties (6) to act as commander in-chief of armed forces of the United States (7) to act in emergencies.

The President who is both the head of state and of the government has so many functions to perform such as greeting foreign dignitaries, welcoming the leaders of other nations, acting as a host at state dinner, lending his presence to the inauguration of some event, whether it be public power project or the first home game of the Washington baseball team. The President as the head of state acts as a symbol of the nation. Particularly in times of crisis, the peopie turn to the President as the leader who speaks with authority and guidance.

The Constitution enjoins that the President should "take care that the laws be faithfully executed" and the section requires an oath to preserve, protect and defend the constitution. Thus one might think that the President has a very active part in law enforcement. In practice, the responsibility of enforcing law of U.S. rests primarily upon the Department of Justice, the federal district Attorneys, the U.S. marshals and the federal court. If need be the President may use various means at his command to assure compliance with federal law. Otherwise, the President may use various means at his command to assure compliance with federal law. Otherwise, the President's role is to "take care" that the laws are faithfully executed. As the head of the federal administration, the President has some power to meet internal disorder. If the states are in need of federal interference regarding maintenance of internal order it would be readily available for them under his direction. These requests are made to the President either by state legislature or by the state Governor. If the legislature is not in session the federal government may send its troops to any state without awaiting request from the states to protect federal property or functions.

Check Your Progress
7. How the President of USA elected?

POWERS OF APPOINTMENT AND REMOVAL

The power to Appoint is one of the most far reaching of Presidential powers. In Article II Section 2, the constitution states, that the President "shall nominate and with the advice and consent of the Senate shall appoint ambassadors. Other public ministers and counsels, judges of the Supreme Court, and all other officers of the United States which shall be established by law".

It is evident from this Article of the Constitution which qualifies the President by stipulation that major appointments must receive the approval of the senate. Federal functionaries can be classified into two categories - (1) major positions which require the consent of the Senate and (2) "interior" jobs which are now filled under rules and regulations of the merit system. Approximately .twenty five thousand officials are subjected to the direct appointment power of the President.

The first Congress declared by law that the President alone might remove all officers appointed by him except judges. The political situation that arose between President Andrew Johnson and the Congress made the President to consult the Senate before removing any officer. This was repealed about twenty years later. An Act of 1876 provided that first, second and third class post - masters might be removed only with the consent of the Senate. In 1926, in Myers Vs United States case, the court declared the statute as unconstitutional. The court said that the power to remove was implied not only from the power to appoint, but also from the general authority of the executive to see that the laws were executed faithfully. The present position is, after Humbe's Executor (Rathburn) Vs. United States 1985, that the President may remove executive officers but regulatory commissioners with part - legislative power, may not be removed by the President.

WAR AND DIPLOMATIC POWERS

We may now turn to the President's powers relating to defence and foreign affairs. Though the constitution gives vast powers are not exclusive. As the commander-in-chief of the armed forces, the President can deploy the forces as he sees fit. But Congress alone has the right to "declare" war. The President can negotiate treaties with foreign states, but they become binding only if they are approved by the Senate of a two-thirds majority. If a treaty involves

raising money, the consent of the House of Representatives also becomes necessary. The President can appoint ambassadors and ministers to represent the U.S. abroad, but such appointments require Senatorial approval.

Constitutionally speaking the President's hands seem to be tightly bound in this system of checks and balances. In practice, however, the American President has always played the dominant role in determining the foreign policy of the United States. As early as 1800, Marshall declared that "the President is the sole organ of the nation in its external relations, and its sole representative with foreign nations". Lakshmi said, "The President has decisive hand in the shaping of foreign policy, even though Congress and specially the Senate, retains a negative voice : As the constitution does not assign the shaping of foreign policy to any other organ of government, the President as a chief executive, has assumed this role. The President not only formulates foreign policy but also enforces it.

TREATY-MAKING POWERS

An important aspect of the President's role in the sphere of foreign relations concerns the treaty-making power. According to the U.S. constitution, the treaties are negotiated under the President's direction. These treaties would be effective only if they get the approval of the Senate. At times, it leads to a bitter struggle between the President and the Senate. To get over this difficulty, the President may gain his object through "executive agreement". Executive agreements are arrangements made by the President with other countries and they do no need Senatorial approval.

LEGISLATIVE POWERS

The American President is not only the nation's chief executive, he also plays an important role in law-making. Potter had described him as "the chief legislative in the American constitutional system". The American constitutional system is based on the principle of separation of powers. Under the system, legislative power is formally vested in Congress. It means that the President has no direct power to make laws. However, separation of powers in the American political system is by no means complete. The President is vested with positive as well as negative means of influencing legislation. He has the positive power of initiating legislation through his messages. This annual message is called the State of Union Message. The personal appearance of a President

before a joint session calls public and congressional attention to his message. Most of the Presidents also attempt to secure the passages of their proposals through appeals to public and by pressure on the Congress.

The President is not a member of either House of the Congress and cannot summon (except in special sessions), prorogue and dissolve the Congress. The President can convene either House separately, but this privilege has been used very rarely. Since the two Houses rarely disagree seriously over the date of adjournment, the President's power in this regard is of little practical importance. Equally important as a means of influencing legislation is the President's veto power. The constitution requires that every bill passed by the Congress must, before it becomes law, be presented to the President for his assent; if he approves, he signs the measure; if the disapproves the measure he returns it to the House of origin with his objection within 10 days. The proposed legislation dies unless each House by a two-third majority passes it over the veto, in which case it becomes law without Presidential approval. If the President does not return the bill within 10 days, excluding Sundays, it becomes law without his signature. But if the Congress adjourns before the ten days have elapsed, the President may kill the bill by simple sleeping over it; this is known as "pocket veto" and it is absolute. The President has no power of veto over the appropriation bills.

JUDICIAL POWERS

The constitution empowers the President to appoint principal officers of the various departments including judges of the Supreme Court with the approval of the Senate. The President has some exclusive judicial powers, such as granting pardons, reprieves etc. His authority in this regard does not apply in cases of violation of the state laws. A pardon is a release from liability from punishment. A reprieve postpones the execution of penalty; its use may be decided by humanitarian considerations or by the expectation of new evidence. An amnesty is a group pardon, issued by the President to a class of offenders. The most spectacular use of the pardoning power was President Ford's pardon of Richard M Nixon, a month after his resignation as President in 1974.

FINANCIAL POWERS

The financial power of the President covers the area of budget making. The Budget and Accounting Act of 1921 had created a department called Bureau

Check Your Progress

8. Explain the Legislative Powers of the President of USA.

of Budget. It is empowered to supervise the spending activities of the federal government. The Bureau is headed by Director who is appointed by the President and acts under his direction and control. The office of Budget and Management assumed the work of Bureau of budget.

EMERGENCY POWERS

Lastly, we refer to the powers of the President during wars and national emergencies. As the chief of armed forces he appoints chiefs of armed services and can remove them at his will, particularly during wartime. The power to declare war lies with the Congress but he can make the Congress to adopt his proposals during emergencies. Presidents like McKinley, Wilson and Roosevelt did so. When war comes, the powers of the President increase tremendously. He decides about the mobilisation and stationing of the troops. Congress may still add to his powers by enacting blanket legislation giving him discretionary authority in matters of vital importance in national and international affairs.

SYSTEM MAINTENANCE FUNCTIONS

A brief study of the functions and powers of the President needs some more empirical investigation of his role as chief executive in the American polity. The pragmatic study of the President discloses a surprising difference between the President and Presidency. It is true that he is the man who dictates most of the activities in the American political system. The functions like enhancement of taxation down to sending troops to some troubled spot will be decided by the President. But all this makes a peculiar distinction betwen the President as the chief executive and he as a single individual. Thus we are led to make a study of the structural leadership and system maintenance functions of the President.

In the early years of American democracy the President worked with the help of two or three assistants. The growing technology and nature of the work today makes him appoint more persons to assist him to carry out the administration. Now there are twelve regular departments to help the President and he is the wearer of many hats".

Thus. American President is the leader of his nation. He is elected as a party man and he remains "the leader-in-chief of his party" while in office. But his position as the nation's chief executive makes him something more than a mere party leader. He is the symbol and voice of his nation. By the system of checks and balances, the Americans did not confer upon the President the position of a unified leader. But the Americans have created what the founding fathers failed to do. In Wilson's words, the instinct of the people "craves for a single leader", and it is from the President rather than from the Congress. Congress cannot provide such a leader because they tend to be parochial. It is the President who represents the country as a whole.- Even though the system of checks and balances is there, the President enjoys undisputed leadership in national affairs.

Finally we come to discuss the system maintenance function of the President.

The American government is federal in character. In case of disputes between states, the President is the great resolver of these disputes. As the chief executive with his vast scope of leadership he can pervade the entire governmental system. In case the two Houses of Congress do not agree on a date of adjournment, he can adjourn it. He can send troops to any troubled spot to bring down the situation to normal. In case any internal disorder erupts with violence and arosen, he appears on the television to quell the rebellion by his forceful argument.

The President has tremendous potential to generate support for a specific policy decision. Though press, radio, television and by sending messages to Congress, he may mobilise public opinion in favour of his policy. Roosevelt did so during the second world war period. Above all, the President is the legitimiser of the political system. His assent is important for a bill passed by the Congress to become law of the land. In this way, the President plays his own important role in the maintenance of the democratic system envisaged by the founding fathers based on the principle of separated institutions and separated powers.

5.11 PRESIDENTIAL CABINET

There is no constitutional provision for a cabinet to advise the President in the exercise of his powers. However, a cabinet has grown by convention and

has been recognised by constitutional practice. The Presidential cabinet has arisen from the constitutional provision of the appointment by the President of heads of various departments. The appointments of these officials by the President must be approved by the Senate which rarely rejects such appointments.

Usually, the President selects these men from his own party. The members of the cabinet are called Secretaries and they are neither members of the congress nor responsible to it. They are hired and fired by the President according to his whims and fancies. Unlike the British cabinet, the American cabinet enjoys no real power, nor does its advice bind the President. There is a classical example to prove this. Once an important matter was being discussed by 7 members of President Lincoln's cabinet. When the matter was put to vote he found that every one was against it. But he announced the final decision of the cabinet by saying that there were 7 nays and 1 aye and therefore the aye got it. This shows the utter subordination of the cabinet to the President. Though the members of the cabinet do not attend the sessions of the Congress, they may be asked to appear before the Congressional Committees to defend the executive actions and President's views regarding certain legislations.

5.12 EXECUTIVE DEPARTMENTS

The members of the cabinet are heads of the different executive departments. At present there are 12 departments. They are as follows:

DEPARTMENT OF STATE

This department was created in 1789, under the charge of the Secretary of the State (Minister for foreign affairs). In the order of ranks, he occupies the first place in all official functions and sits on the right hand side on the President at the meetings of the cabinet.

DEPARTMENT OF TREASURY

This department, also established in 1789 under the charge the Secretary of Treasury (Minister for finance), supervises the collection of taxes levied by the federal government, and printing or coining of money and bonds.

Check Your Progress
9. What is Presidential Cabinet?.

DEPARTMENT OF JUSTICE

It was established in 1870 with Attorney - General (Minister for law) as head. His duty is to advise the President, and other heads pf departments on legal matters. His other duty is to get crimes investigated and offenders prosecuted for violation of federal laws.

DEPARTMENT OF POST OFFICE

It was set up in 1792. The Postmaster - General (Minister of communication) is the head of this department. The department supervises the delivery of the mails.

DEPARTMENT OF INTERIOR

This department created in 1849, under the Secretary of Interior, is in charge of survey, management, sale or lease of public lands, conservation, administration of Puerto Rico etc.

DEPARTMENT OF AGRICULTURE

Established in 1889 under a Secretary, it supervises scientific researches and investigations in the farm field and enforces federal laws with regard to food and drugs.

DEPARTMENT OF COMMERCE

Set up in 1903, this department promotes foreign trade both by sea and air, enforced quality control and correct weight and measures.

DEPARTMENT OF LABOUR

This department was created in 1913 and it takes steps to promote the welfare of the labour.

DEPARTMENT OF DEFENCE

This department created in 1947 by amalgamating the departments of war, navy and air force, is headed by the Secretary of Defence.

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

It looks after the promotion of health, education and the general welfare of the public.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

It looks after the development of housing and problems relating to th urban development

DEPARTMENT OF TRANSPORTATION

This department, created in 1966, is in charge of transport developmen

SUMMARY

In this lesson the emergence of American constitution is traced. How British Colony became a independent nation is very study. The features of big nation, America is explained. In contrast to England a Unitary State Americ is a federation. Not only that American Constitution is Presidential form. Th mode of amendment, federation, division of powers are described. America President is enjoying maximum powers in comparison with other heads of th states. He cannot be compared to any other World Executives. Cabinet cannc give advice to the President. American Cabinet is not enjoying real powers.

KEY WORDS

Separation of Powers - Popular Sovereignty - Bill of Rights - Presidentia Electors – Impeachment - Kitchen Cabinet.

ANSWER TO CHECK YOUR PROGRESS

For Question No 1	Refer Section 5.2
For Question No 2	Refer Section 5.3
For Question No 3	Refer Section 5.3
For Question No 4	Refer Section 5.5
For Question No 5	Refer Section 5.5
For Question No 6	Refer Section 5.7
For Question No 7	Refer Section 5.10
For Question No 8	Refer Section 5.10
For Question No 9	Refer Section 5.12

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MODEL QUESTIONS

1. Trace the growth of the constitution of USA

2. What is federalism? Explain the US federalism.

3. "The American President is the most powerful executive in the world"- Substantiate.

4. Examine the position and powers of the Presidential cabinet in the U.S.

UNIT - 6

GOVERNMENT OF UNITED STATES OF AMERICA - LEGISLATURE – JUDICIARY- PARTY SYSTEM – CIVIL SERVICE – LOCAL GOVERNMENT

INTRODUCTION

The Congress is the legislative wing of America. This consists of Senate and House of Representatives. This is a bi-cameral legislature. American Senate is the most powerful second chamber. Another feature of discussion in this unit is the process of law-making and committee system. In USA there are two judicial system, namely federal judiciary and the other is the judiciaries of the states. In America, there is judicial Review, a unique power of American Supreme court. The judiciary is the watchdog of people's right and the custodian of the constitution. In American Two – party system is in existence. In this unit the role of two political parties and the pressure groups and procedure of election will be discussed. The American Constitution did not mention about public service. American congress creates New Departments President appoints the civil servants with the approval of senate. This lesson discusses the growth of public service how it grew from spoils system to merit system. Features of American Local Government will be discussed. Local government in France is in the state list. Early state decides the pattern of local government based on the experience and environment. There is no similarity in the local government in the states.

OBJECTIVES

1. To know about the organization, role and functions of Congress.
2. To understand the functioning of the committee system.
3. To know about the American Judicial system.
4. To study the details of Judicial Review.
5. To know about the merits and demerits of bipartism political system.
6. Bring out the role of pressure groups in USA

7. The study the civil service and local Government

8. To evaluate the role of public servants

9. To understand how the states organize the local government

STRUCTURE

6.1 CONGRESS

Article I of the constitution provides for legislative branch of government, "The Congress of the United States, which shall consists of Senate and House of Representatives". The Constitution of the United States vests all legislative powers in a bicameral legislature, known as the Congress. The upper House is known as Senate and the lower House is called by the name of House of Representatives. The former represents the federating units i.e., the states

and the latter represents the citizens on national principle based on population. Both the chambers enjoy co-equal powers and co-ordinate legislature powers in theory as well as in practice. However, the Senate is endowed with certain special privileges which enhance its prestige over the House of Representatives. A study of the composition and the powers conferred on the two bodies of the Congress will show that the Senate is not only more powerful than the lower House, but also the most powerful second chamber of the globe.

6.2 HOUSE OF REPRESENTATIVES: COMPOSITION

Section 2 of Article I deals with the composition of the House of Representatives. The members are elected every two years on the basis of population from single member constituencies. The number of representatives for each state is fixed by the Congress in proportion to its population and atleast one representative is elected from every state. Now the membership of the House is permanently frozen at 435, unless changed by a law of the Congress. The House cannot be dissolved before its term of 2 years is over.

A representative must have attained the age of 25 years and must have been a citizen of U.S.A. for atleast seven years. He must have been a resident of the State from which he wants to contest the election and must not be holding any office of profit under the government of the United States.

The House meets every year on 3rd. January and remains in session until its members vote to adjourn. Special sessions may be, however, convened by the executive.

PRESIDING OFFICER

The presiding officer of House of the Representatives is its Speaker who is chosen by the House from amongst its members. The election to the Speaker is held purely on party lines. He is nominated by the party that has majority in the House. Unlike his British counterpart, the American Speaker is partisan and openly favours the party to which he belongs. He openly takes part in the debates. He is the leader of the majority party and does not sever his party affiliations even after he is chosen as the Speaker. The cherished principle of the British constitutional practice - 'once a Speaker always a speaker[1] - is seldom followed by the Americans. The legislative leadership in the House is given by him. It is he who presides over the meetings of the House of Representatives, maintains order

Check Your Progress

1. Discuss the powers of the House of Representative.

and decorum in the House, recognises members on the floor, puts questions to vote, interprets the rules of procedure, protects the privileges of the members of the House and represents the House in its collective capacity. However powerful a role he may play as the presiding officer of the House, the House has every right to override his rulings.

POWERS AND FUNCTIONS

The House of Representatives enjoys coequal and coordinate powers with the Senate. Section I of Article I states that all bills for raising revenue shall originate in the House of Representatives. Legislative deadlocks are resolved by Conference Committees. It has the power to prefer charges against the President and other federal officials for impeachment. Since the executive is not responsible to the Congress, the House has "no control over the executive, as in a parliamentary government. However, it is able to control the administration by means of its power of the purse. It shares with the Senate the right to propose amendment to the constitution and to admit new states.It shares with the Senate the power to declare war.It has the right to choose the President from among the three candidates securing the highest votes in the presidential election in case no one obtains majority in the electoral college.

6.3 SENATE

COMPOSITION

Section 3 of Article I deals with the composition of the Senate. The Senate is the second chamber of the Congress. It consists of 100 members. Each state is entitled to send two Senators to the Senate irrespective of its size. The Senators are elected for a term of six years, one-third of them retiring every two years. The retiring Senators are eligible for re-election.

A Senator must be atleast 30 years of age. He must have been a citizen of U.S.A. for atleast nine years and a resident of the state from which he is elected. He must not be holding any office of profit under the government of the United States.

Originally the Senators were elected by the legislatures of the respective states. But now, after the passage of the 17th constitutional amendment, they are elected directly by the people of the states concerned.

PRESIDING OFFICER

The presiding officer of the Senate is the Vice-President of the U.S.A. who is the ex-officio chairman. He is only a dignified presiding officer of the House and does not enjoy as much powers as that enjoyed by the Speaker of the House of Representatives. The Senate elects from among its members a President pro-tempore who presides over its meetings in the absence of the Vice-President. The Vice-President is not a member of the Senate but the President pro-tempore is, in fact, the nominee of the majority party in the Senate. The Vice-President has a casting vote in case of tie.

POWERS AND FUNCTIONS

The Senate of the United States enjoys extensive powers in the legislative, executive and judicial spheres. The very fact that the enormous powers are vested with it has weakened the other chamber considerably.

It has already been noted that both the House of Representatives and the Senate enjoy coequal and co-ordinate powers in the legislative and financial matters. The ordinary bills can originate in either chamber of the Congress. But in practice, most of the government bills originate only in the Senate in the legislative practice'. All money bills originate only in the lower House. But this is of no great significance as the Senate can alter the money bill passed by the House of Representatives and sometimes it changes the entire bill except its title and passes it into a new bill entirely different from the one received from the lower House. A bill becomes a law when passed by both Houses of Congress and assented to by the President. In case there is a disagreement between the two Houses in passing a particular bill, the matter is referred to a Conference Committee consisting of 3 to 9 members drawn from both Houses. Here it may be noted that its counterpart in Britain i.e. the House of Lords, enjoys only a delaying power.

The Senate has the power to ratify all high appointments made by the President and the treaties concluded by him. Through this sharing of the appointment power with the president the Senate is in a position to exercise control over the executive which the lower House does not posses. This along with the fact that the executive is not responsible to the House of Representatives has made, the Senate stronger and the House of Representatives weaker. The growth of the convention called 'Senatorial Courtesy' has made it easy for the

President to get the sanction of senator for any appointment he makes. The right of the Senate to share with the President his powers of appointment has not established any powerful check upon the discretion of the President. By its power of ratifying treaties concluded by the president it is enabled to influence the formulation of the foreign policy and direct its course to a great extent. Thus, the Senate enjoys enormous powers in the executive field which not even the popular chamber has to its credit nor any other second chamber can boast of.

In judicial sphere as well the Senate enjoys no less powers than in other fields. The Senate is the court of impeachment of the President, Vice-President, and other high ranking officials of the United States. When the Senate sits as a court of impeachment its meeting is presided over by the Chief Justice of the Supreme Court. Moreover, it may be noted that the judges of the Supreme Court are appointed by the President only with the approval of the Senate.

In addition to these powers the Senate has the right to initiate constitutional amendments and to decide the Vice-President from among the two candidates who have secured the highest votes. Finally, it may be said that the Senate exercises greater control over the President's administration by its power of appointing investigating committees which are intended to enquire into the administrative inefficiencies and excesses and submit a report for necessary actions to be followed.

The powers discussed above make the Senate a very powerful legislative body in the whole world. Besides these, there are a few other factors which enable the Senate to play a dominant role over the House of Representatives. In the first place, the small membership of the Senate has allowed it to have a more exhaustive discussion and deliberation than the House of Representatives which cannot afford to have such an effective deliberation on account of its larger membership. Secondly, the longer tenure of the Senate puts it at an advantageous position than the House of Representatives which is not able to do full justice to its programme and policy during the short span of two years. Another advantage of the longer term is that experienced and seasoned politicians are more inclined to become Senators. Thus the Senate has become the repository of wider knowledge and legislative experience; and this has elevated the status of the Senate. Thirdly unlike many other second chambers

of to-day, American Senate is chosen by popular vote. It goes without saying that a directly elected chamber will have more influence and weight than an indirectly elected one or a second chamber wholly or partially based on nominative principle. Finally our discussion on the powers and functions of the Senate will not be complete if nothing is said about the greater freedom of speech enjoyed by the Senators which can also be considered as one of the factors responsible for its increasing power and popularity. In it there is a possibility for detailed and lengthy discussions to be held on the bills. But by this freedom of speech a Senator may go on speaking on a particular bill for any length of time even to the extent of not allowing it to get passed. This method is known as filibustering. In order to safeguard a bill from filibustering the Senate in 1917, amended its rules. A motion to end a debate must be initiated by atleast 16 Senators and it must then be passed by a majority of two-third of the members present in the Senate. But this rule was not effective in restricting the freedom of the speech. This closure rule was further amended in 1949 and according to the new rule two-third majority of the total membership of the Senate is required to put an end to debate. This has made the rule unworkable and the Senators continue to enjoy their unrestricted freedom of speech and the practice of filibustering thrives as ever before.

However great and high one may speak of the Senate, there are always people who point out its shortcomings. In their opinion the Senators, instead of representing the interest of their respective estates represent the interests of some powerful industrial or commercial or business groups and this has paved way for corruption, favoritism and nepotism is the long cherished convention called 'senatorial courtesy'. They say that due to the unrestricted freedom of speech enjoyed by the Senators much of the precious time and energy of the House are wasted. Finally, it is pointed out that the equality principle on which the states are represented in the senate is undemocratic and unreasonable for the different states are treated as equals, irrespective of their size and population.

Despite these shortcoming found in the Senate, we cannot be wrong if we conclude by saying that the Senate of the U.S.A. is a classical example of a second chamber, which is not only more powerful than the lower chamber, but also more powerful than any other second chamber in the world.

Check Your Progress
2. Is Senate a Powerful Body?

CONGRESS RELATION WITH THE EXECUTIVE AND THE JUDICIARY

The constitution which is based on the theory of separation of powers makes due allowance for the principle of checks and balances. The principle of checks and balances has established between the three governmental organs the necessary connections by which the smooth running of the governmental machinery is ensured.

The executive is controlled by the Congress with its right to ratify appointments made and treaties concluded by him and the power of impeachment and by the judiciary by its power of judicial review. The judiciary is controlled by the executive with its power of appointing the judges and by the Congress with its power of ratifying the judicial appointments made by the executive and the power to impeach the judges. Thus, we find though the Congress, the President and the Supreme Court are established independent of each other, it is the principle of cheeks and balance which ensures a smooth functioning of the American political system.

The traditional pattern of executive-legislative relations in which the President formulates specific policies and is responsible to administration and the Congress enacts broad policy, has been partially reversed. The President has now become a key man in legislation while the Congress spends much of its time intervening in the activities of the executive branch. The Congress members may be displeased with the accreditation of executive authority, yet they often need President's help in making appointments, or in campaigning for re-election. So too the President may be frustrated with the interference by the Congress, yet he needs the assistance of the Congress members if he is to govern efficiently. The relationship between the Congress and the executive is thus complex. There is an inevitable friction and conflict but there must also be agreement and co-operation if either is to accomplish policy goals. In such situation, of course the most likely tactics are negotiation and compromise. The reasons for Presidential -Congressional friction are many. Some conflict is created by the system of shared powers, i.e., the powers meant to check one organ by the other. Another reason for conflict between the two is that the President and the members of the Congress are chosen by very different constituencies and this influences each in quite different directions. The President who is chosen in a national election may think in terms of a national

policy whereas the Representative or Senator who is elected from constituency will be sensitive to the demands of local importance. These contrasting influences are bound to result in conflict.

There are a number of ways through which the President can influence the Congress. The Constitution instructs President to give the Congress information on the state of the Union and to "recommend to their consideration such measures as he shall judge necessary and expedient". Through this power the President is able to recommend legislations. In addition, the President has power to call Congress into special session for action on his recommendations. The President cannot, however, participate in this legislative process directly and therefore he makes use of liaison staff to persuade the Congress to adopt or reject legislation. In inducing Congress to take favorable action, a President may invoke party loyalty. The Congress members belonging to his party who do no want their party lose the next election support him. There are always some members of his own party to oppose him in every issue without bothering about their loyalty to the party. But at the same time there may be members belonging to the opposition party agreeing with the President, but would not vote for him. The President may persuade such members of both parties to support the legislative measure initiated by him.

There are a few informal methods by which also the President can influence the Congress. The President may persuade the majority and minority leaders, committee chairmen and other important and influential Congressman through friendly gestures, and sociability. The President may also use public opinion to influence Congressmen. Sometimes a promise of support for a Congressman's pet bill or a threat of Presidential opposition to it may procure reaction for the President's own programme. Another method of influence is the distribution of patronage. Though there is possibility for friction in the legislative-executive relation the methods described above help to effect a compromise between the two.

The Congress-Supreme Court relation is affected by the power of judicial review given in the hands of the Supreme Court. By the review the judiciary can declare the legislative enactments null and void if they contravene the provisions of the constitution. Therefore, the legislature has to pass laws strictly according to the constitution and shall not exceed the powers granted by it. But

in the U.S.A. the Supreme Court exercises this power on the basis of due process of law that means law may be declared unconstitutional if it does not satisfy the rules of reason. In practice, it implies that a majority of the judges of Supreme Court may declare any law invalid if it appears to them as unreasonable, unjust or immoral even though it is not a direct contravention of a particular clause of the constitution. In this way the Supreme Court in America has assumed the position of super legislature. The power of judicial review has undermined the prestige and sense of responsibility of the Congress. However, it may be noted that the Congress also exercises control over judiciary through its power of prescribing the number of judges and their emoluments. Moreover, all judicial appointments made by the President are ratified by the Senate. The district judges depend much upon the goodwill of the Senators for appointment. Despite this power of control exercised by Congress over judiciary, it is the judiciary with its power to judicial review that determines what kind of law the Congress has to pass. Thus, we find that the Congress can work successfully if only it maintains a cordial relation with the executive and the judiciary.

6.4 PROCESS OF LAW-MAKING

As the President and his cabinet are excluded from the legislative work in the U.S.A. there are no government bills initiated by ministers. Generally, bills come from individual Congressmen, the administration, the interested groups, and Congressional Committees. The bills are initiated by any member. Ordinary bills can originate in either House, by money bills can originate only in the House of Representatives. There is no entirely typical path by which a bill becomes a law, but the major steps in the legislative process are common to most bills. They may be discussed as follows:

INTRODUCTION

This is the first stage in the process of law-making. The mover of the bill places the measure in the hopper (a box) on the Secretary's desk in the House of Representatives, and in case in the Senate, in the hopper on the clerk's table. It is then printed and the copies are made available to all the members.

FIRST READING

First reading of the bill takes place either on the same day it is introduced or on some other day fixed on the agenda. This reading is only a formality. When the bill is printed in the journal and the Congressional records, the first reading is over.

COMMITTEE STAGE

All bills are referred to the proper standing committees. The members of the committees scrutinise the bill clause by clause. At this stage even public hearings are allowed. Sometimes, even a sub-committee is formed to discuss the minute details of the bill. A committee may report back the bill to the House with or without changes or it may condemn the bill wholesale and substitute a new bill or it may ignore it. With the help of a majority vote in the House of Representatives, the sponsor of the bill can compel a committee to discharge the bill within 15 days. The rule that prescribes this is known as the 'Rebase Rule'. But it is not always possible for the House to get the required majority to enforce this rule effectively. As a result, the committees have grown very powerful and their decisions have been final in the case of most of the bills.

FLOOR ACTION

A bill which is reported back to the House by the committee is put on one of the three calendars, namely Union Calendar, House Calendar and Private Calendar. The Union Calendar has money bills which are favorably reported. The House Calendar has all other bills. The Private Calendar has all non-public bills.

SECOND READING

During this stage the bill is fully discussed. Amendments and counter - amendments are proposed, and passed by voting. When it is passed, the bill is printed and kept ready for third reading.

THIRD READING

At this stage only the title of the bill is read and the bill is voted upon as a whole. When it is passed the bill is signed by the chairman of the House and sent to the other House.

PASSAGE IN THE OTHER HOUSE

The bill passed by one House, when sent to the other House, passes through more or less the same procedure in that House as well. It there is any disagreement between the two Houses over a bill, the matter is placed before a joint conference committee consisting of 3 to 9 members from each of the House. If no compromise is effected by the conference committee, the bill is

killed. When the bill is passed by both Houses, it is sent to the President for his assent. No bill passed by the Congress can become law without being assented to by the President. The President enjoys both suspensive and pocket veto over the bill passed by the Congress. The suspensive veto implies that the President can send back the bill to the Congress for reconsideration. In such an event, if the Congress repasses the bill with two-third majority in each House separately, the President cannot withhold his assent. As regards his pocket veto if he fails to give his assent within the stipulated period of ten days during which time the Congress also goes out of session, the bill is killed.

6.5 PROCEDURE FOR MONEY BILLS

Money bills can be originated only in the House of Representatives. The budget is prepared by the Director of the Bureau of the Budget under the supervision of the President. The budget is introduced in the House on the responsibility of the President. The revenue bill containing the proposals for income is referred to the Committee of Ways and Means and the appropriation bill containing the estimated expenditure is referred to the Committee on Appropriation.

Both the bills are discussed and reported back to the House by the respective committees. The House then discusses and debates upon the bills one by one. After having been passed by the House, they are referred to the Senate. The Senate can amend them in any way it likes. If the bills are passed by the Senate as well, they are sent to the President for his assent. In case or disagreement, the procedure is the same as for ordinary bills. The bills become Revenue and Appropriation Acts respectively on receipt of the signature of the President..

6.6 COMMITTEE SYSTEM

A remarkable feature of the legislative practice in the United States is that a major portion of the work in' the House of Representatives and in the Senate is expedited through committees, in all modern legislatures it is accepted both in principle and in practice that the use of committees lessens the burden of legislature which is hard pressed for time and paves the way for healthy and detailed discussions of the bills with the expertise knowledge of the selected few. But the significant aspect of the committees found in the American Congress is that they enjoy autonomy from the central leadership. In countries

Check Your Progress

3. Explain the process of law making in USA.

with parliamentary form of government, the bills are under the care of ministers from the beginning till the end and the role of the committees is only rudimentary. In the United States, however, the committees play a vital role in shaping the bill.

The House of Representatives has twenty, and the Senate sixteen permanent committees, each of which is concerned with a particular subject. Both Houses have committees on agriculture, appropriation, the armed services, banking and currency; civil service, the District of Columbia, government operations, rules, labour, taxation, foreign relations, the judiciary and inter-state and foreign commerce. In general, each Senator is assigned to two of these committees, and each Representative to one. Prior to the enactment of the Legislative Reorganisation Act of 1940, there were more than 80 committees. The reduction in the number of committees has enhanced the influence of the remaining committees. There are now more than 250 sub-committees. From time to time the House or the Senate creates a special committee to conduct a temporary investigation or to gather some information to aid law-making. But now the practice is that such investigations are assigned to some standing committee instead of creating a special committee. There is also a committee of the whole House in the House of Representatives which is intended for expanding business and reaching agreements on detailed provisions of the bills. When the House meets as a committee of the whole, all its members sit as a committee with an appointed chairman. Joint Committees consisting of an equal number of Representatives and Senators are also set up, such as Joint Committees on Atomic Energy, on the Economic Report, and on the Library of of the Congress, on Internal Revenue, Taxation. The Conference Committee, set up for ironing out differences between the two Houses of the Congress, is also an example of Joint Committee.

All the standing committees in both Houses are bipartisan. Most of the Senate committees have fourteen to nineteen members and House committees range from nine of fifty members.

The chairmen of the committees play a significant role in the legislative process. A chairman has the power to arrange the meetings of his committee; to select much of its professional staff, to appoint the personnel of its sub committees; to determine the order in which it considers bills; to decide whether

public hearings shall be held on a bill; to arrange to have the bill back to the House from the committee; to manage the floor debate on the bill; and to ward off unwanted amendments. He is, of course supposed to exercise those powers subject to the control of the committee as a whole. The chairman exercises these powers independently of the presiding officers, floor leaders and other Congressional and party officials; while appointing a Chairman his seniority or length of service on committees is taken into consideration.

A comparison with British Committee system is necessary to understand the unique features of the American committee system. In Britain, the committees are meant only to revise the bills and offer technical advice to the legislature. But in America the committees act so independently of the presiding officers that they are considered as 'miniature legislatures'. The chairmen of the British committees are neutral and impartial, whereas their American counterparts are partisan in character. Again, the British committees work under the leadership of the cabinet, while the American committees function under the leadership of their chairmen. In Britain a bill referred to a committee is necessarily to be reported back to the House; but in America bills may be killed by a committee. In the English parliament, bills are referred to the committees after their principles have been discussed, whereas in the American Congress the bills are referred to the committees as soon as they are introduced in the House. Another difference between the two systems is that in America most of the bills are shaped through certain evil practices known as lobbying, pork barrel

Lobbying is a practice through which the lobbyists guard the interests of some industrial or commercial organisations. The lobbyists are the interested parties who by means of bribes, personal contacts, telephone calls etc. try to influence the members of the Congress to get a particular legislation passed in favour of the industrial or commercial groups represented by them.

The pork-barrel and log-rolling are the other two devices which developed in U.S.A. out of the desire of getting the economic surplus distributed among the industrial or commercial or business concerns in which the members of the Congress had interest. The pork-barrel had its origin in the plantation days when pork was to be distributed among the slaves by their masters from a big barrel. Now this term is used to refer to a piece of legislation meant to

distribute the economic surplus of the country. To get a big share of this surplus one needs the help of others and this has given rise to the practice known as log-rolling. In the early colonial days the slaves were used to cut down trees and carry them from one place to another. They could not do this without the help of others. In the same way, to get a share for their interested groups in the economic surplus the members of the Congress bring all possible pressures on one another in order to get a legislation passed in their favour. These practices have not only undermined democratic norms but also have widened the scope for corruption in public life.

6.7 JUDICIARY

The Federal Judiciary occupies a special position in the American constitutional system. The constitution has vested the judicial power in the hands of the Supreme Court. The Founding Fathers regarded the judiciary as a "third member of the governmental trinity, no more important than the other members". In a federal state, a strong and independent judiciary is absolutely necessary. In the U.S. the Supreme Court occupies an important position in this regard. The Court has indeed, acted as the final interpreter of the constitution. The American federal judiciary has taken upon itself the role of the guardian of the constitution and has exercised the power of judicial review. The devleopment of the Supreme Court into a final arbiter of constitutional disputes is one of America's most important contributions to the science of government. Independence of federal judiciary is the most important feature of the American political system. One writer has observed : "it is as difficult to think of the American constitutional system without the Supreme Court as to think of the solar system without the sun"

STRUCTURE

At the base of the judicial pyramid stand 89 District Courts known as trial courts. Every state has atleast one district court. Each district court consists of atleast one judge; but in districts where the work load is heavier, there may be more judges the maximum for any District Court at present being 24. District Courts have original jurisdiction in all cases arising under federal laws. In all

cases, appeal against the decision of a district court can be carried to the next higher court in the judicial hierarchy, namely the Circuit Court of Appeal.

Above the District Court the Circuit Court of Appeal stands. There are eleven such Courts in the United States. The whole Country has been divided into ten parts and each part has one such court plus one for the District of Columbia. In order to reduce the work load of the Supreme Court, these Courts were created in 1821 . The Circuit Courts of Appeal have no original jurisdiction. They are purely appellate courts and hear appeals against the decision of circuit courts in their respective circuits on questions of law. They also exercise the power of reviewing and enforcing the orders of many quasi-judicial bodies such as National Labour Boards. In most cases which come before them, the decision of the Circuit Courts is final, but in some cases, viz. those in which a state law is declared unconstitutional, appeal can be carried against the decision of an appeal Court to the Supreme Court as a matter of right. Each Circuit Court consists of three to nine circuit judges who are appointed by the President with the consent of the Senate. The judges hold office during their good behaviour. There are a number of special federal courts which deal with matters of highly technical character. There is, for example, the court of claims which hears financial claims against the federal government. Other Special Courts are the Court of Customs and Patents Appeals, the Tax Court and the Court of Military Appeals. At the top of the federal judiciary there is the Supreme Court of the United States.

SUPREME COURT

The Supreme Court of the United States stands at the apex of the judicial pyramid. It was established by the Congress in 1789 under the mandatory provision of the constitution. However, the constitution is silent regarding the strength of the court. As constituted first the Supreme Court consisted of a Chief Justice and five associate judges. Its size has been changed from time to time and at present it has a Chief Justice and eight associate judges. The Justices of the Supreme Court are appointed by the President of America, with the advice and the consent of the Senate. Presidential nominations of the Supreme Court are not subject to "senatorial courtesy" but they have occasionally been rejected. The constitution prescribes no qualification for the judges and Presidents have often appointed persons with much legal experience. Political considerations have very often weighed in the selection of the judges. The

judges hold office during good behaviour and may resign, or retire after reaching the age of seventy. They can, in other words, remain in office as long as they live and can be removed only by impeachment. Only one Supreme Court judge, Samuel Chase in 1806, has so far been impeached, but he was not convicted. Their salaries may be raised, but not reduced by the Congress during the tenure of the judges. If a Supreme Court judge retires, he continues to receive full salary as long as he lives and may, at any time, be called upon to serve on a lower federal court. This does not apply to judges who resign. The Chief Justice presides over the session of the court and has the power to assign to the associate judges the task of writing the court's decisions in cases which have been heard, discussed and decided.

The jurisdiction of federal judiciary has been defined in Article III, Section 2 of the constitution and applies to "all cases in law and equity arising under the constitution and laws of the United States and treaties made. . . under the authority thereof; all cases affecting ambassadors, and other public ministers and consuls, to all cases of admiralty and maritime jurisdictions, to all controversies to which United States shall be a party; to controversies between two or more states; between a state and citizens of other states; between the citizens of different states; between the citizens of the same state claiming land under grants of different states and between a state and the citizens thereof an foreign states, citizens and subjects. The eleventh amendment has however, provided that national judicial power shall be deemed to extend to any suit brought against one of the states of the union by citizens of one, there or by citizens of subjects of any foreign state. All the cases do not come directly to the Supreme Court. In fact, the Supreme Court applies original jurisdiction to only two types of cases; (1) those affecting ambassadors, other public ministers and consuls; (2) those in which states are parties. In all other cases mentioned above, the Supreme Court has appellate jurisdiction. Most of the cases which reach the Supreme Court are started somewhere else. Unlike the Supreme Court of India, the United States Supreme Court does not exercise advisory jurisdiction. The Supreme Court acts when a law has been passed or an executive order is issued and the matter is raised in a specific case. The Supreme Court's authority is final in cases with which it deals and no appeal lies against its decision. The Supreme Court holds regular session every year, beginning on the first Monday of October and ending about the middle of June. All judges sit together and reach decisions by majority opinion. All decisions and opinions

of the Supreme Court are published in the United States Reports, for record and for the guidance of the legal profession and general public.

A mere descripition of its jurisdiction fails to give a correct deal of the immense authority and prestige enjoyed by the Supreme Court in America. It will be useful, therefore if we analyse the various aspects of the position and the role of the Supreme Court in the American political System.

In the first place the Supreme Court has successfully assumed the position of the final interpreter of the constitution. On this basis the court has built up the doctrine of judicial supremacy in the United States. In the words of Justice Hughes, "Americans are under *a* constitution, but the constitution is what the judges say it is". Marshall, the greatest of the Supreme Court's Chief Justice, asserted the court's right to interpret the constitution and the right has never been successfully challenged. The important function of the Supreme Court is judicial review. Judicial review means the right of Supreme Court to examine the laws passed by the federal and state legislatures with a view of determine whether or not they are in consonance with the constitution of the United States. If the Supreme Court feels that a law under examination contravenes any provision of the constitution, it declares that law as ultra vires or unconstitutional. The effect of such verdict is that law becomes null and void and can no longer be enforced. It has wider scope and covers the constitution of the states, treaties made by the federal government and orders issued by the federal and state executive authorities. In fact, there is nothing like an automatic exercise of judicial review by the Supreme Court. On the contrary; the Supreme Court takes up a matter only when a private agency or a state starts a suit questioning its validity with a view to stop its enforcement.

Until recently the Supreme Court of America was the only judicial body in the world which could nullify Acts passed by the legislative body in the country. The system of judicial review in the United States is rather beneficial. Some critics point out that the Supreme Court has used the power of judicial review in an excessive manner. However, two important things should be remembered. Firstly, some of the laws struck down have been of great importance affecting the political and economic interests of a vast number of people. Secondly, the mere existence of judicial review has a powerful impact on Congress and state legislatures and affects the form and substance of legislative proposal coming up before them.

The power of judicial review has made the Supreme Court something more than a mere court of law. In Laski's words, it has made the Supreme Court a "Third-Chamber in the United States". Laws are not made by enactment alone. Enactment merely launches a law. The courts determine what the provisions of the law shall actually mean and how it shall, in practice, operate. A judicial decision determines and fixes the meaning of a law without its being formally amended. To give a new meaning to an existing law is to create a new law. This is what the Supreme Court has often done.

The Supreme court thus protects the fundamental principles of the constitution from the encroachment by the legislative and the executive branches of the federal and state governments. In doing so the Supreme Court has looked upon the constitution as a 'guide' and not as a 'road block'.

James M. Beak writes : "The Supreme Court is only a Court of Justice, but in a qualified sense, a continuous constitutional convention. It continues the work of the convention of 1787 by adopting thorough interpretation of the great charter of government".

One of the commonest charges against the Supreme Court is that it has always acted as a conservative factor in American politics. The Supreme Court is frequently described as the defender of popular liberty and champion of the right of the citizens. But it always defended the right to property. So it has very often invalidated progressive social legislations designed to help the underprivileged. One of the earliest uses of judicial review was to strike down an anti-slavery law in 1857. As late as in 1952, the Supreme Court declared void a law passed by the Congress authorising the federal government to take over a steel mill with a view to dealing with serious strike. In general, the Supreme Court has been guided by the philosophy of economic individualism and has been hostile to legislation having the effect of extending government's regulation of private enterprise.

6.8 JUDICIAL REVIEW - MEANING AND ESSENTIAL MAXIMS

Judicial review may be defined as "the power of a court to hold unconstitutional any law or official action that it deems to be in conflict with the basic law of the constitution". In other words 'Judicial review' is the power exerted by the courts of a country to examine the actions of the executive,

Check Your Progress

4. Describe the Structure of Judiciary in USA.

legislative and administrative arms of government and to ensure that such actions conform to the provisions of the nation's constitution. Actions not so conforming are considered unconstitutional, i.e., illegal and of no effect. Normally though not invariably, judicial review is associated with the federal constitution involving division of legislative powers between the central government and member-states or provisions connected with bill of rights or some other system of fundamental limitations in law-making power.

Judicial review is therefore, a power in the hands of the courts to look into the constitutional validity of a legislative or administrative measures and then give a judgement in regard to its being violative of the constitution either in full or in relation to a particular part. As exercised by the American federal judiciary, this unique power of the judiciary stands on certain well-accepted maxims that may be enumerated as under.

Before the court glances at a particular issue or dispute a definite case, or controversy of law or inequity between bonafide adversaries under the constitution must exist. The party or parties bringing a suit must have a standing. The court does not render advisory opinions. The court will not entertain generalities. It will deal only with specific and particular issues. The party bringing a suit must be a sufferer. All other remedies must have been exhausted before coming to the Supreme Court. The question under study must be of a substantial and not of a trivial nature.The question of fact, as distinct from a question of law, is not formally accepted as a proper basis for the exercise of judicial review. The court may change its view from time to time.

The court will not entertain political controversies; it will be concerned with the legal aspects only. The court will begin with the presumption that the statute under challenge is valid. The court will not ordinarily impute illegal motives to the law-makers.The court may declare the whole law or its parts as invalid. The court is not to be used as a check against inept, unwise and unrepresentative legislators. If the court finds that it must hold a law unconstitutional, it will usually try hard to confine the holding to the particular section of the statute which was successfully challenged on constitutional grounds.

The power of judicial review, as exercised by the Supreme Court of U.S.A. has been highly attacked. It virtually leads to a confrontation between

the executive and the judicial departments. It is also commented that judicial review becomes an effective instrument in the hands of the highly conservative courts. Above all, it elevates the position of the courts to act like the third chamber or the super-House of the legislature. It undermines the authority of the chosen representatives of the people.

Viewed in a different perspective, judicial review looks like an essential instrument in the hands of the judges to work as the protectors of a democratic system of government. It is by virtue of this power that the judiciary can save the ordinary people from the onslaught of the executive and the legislative despotism. What is really needed is that the custodians of the constitution must not exercise their power in a way that leads to the contribution of their personal philosophy into the social philosophy of tire nation and thereby causing a sort of hostile confrontation between the two departments of the political organisation.

EVALUATION

In order to make an evaluation of the real nature of the role of the rule adjudication department we should move from normative to empirical directions. According to traditional view, judiciary is a must for the government. Chancellor Kent said, "where there is no judicial department to interpret and execute the law, to decide controversies, and to enforce rights, the government either perishes by its own or the other departments of government usurp powers for the purpose of commanding obedience to the destruction of liberty".

If we examine the role of judiciary in an empirical way, we may find that politics invades everywhere in the judicial department. The very process of selecting the judges opens room for the politicisation of judiciary. In most countries the real executive head disdains the tendency of "judiciary autonomy" and they take it as a matter of challenge to their authority when the decisions of the court go against their wishes.

Finally, the judges live like conscientious citizens of the country. In order to keep themselves aware of the events going on abroad and in the country, the judges make use of the available communications like radio, press and television. Thus, they have their reflection on their judicial conduct. Their social backgrounds also have their own impact. Viewed thus, we should say that the courts have their

Check Your Progress

5. Explain the meaning of Judicial Review.

share in the political process of the country, though this will vary according to the nature of political system and the standard of political culture.

6.9 POLITICAL PARTIES

The American political parties have a significance of their own. Here the term party has a different connotation and the role of interest groups surpasses the importance of that of the parties. American people realised that "the pressure groups cannot do all that is required to make big government operate in a responsible manner". In this regard, Clinton Rossiter says: "No America without democracy, no democracy, without politics, no politics without parties, no parties without compromise and moderation".

The term 'political parties' as understood in Britain does no apply to the American political system. In the American political system party may be described, not as the classical interpretation of Burke, as social society, In other words, it consists of a set of individuals who seek to translate social and economic interests into political power directly by controlling the apparatus of government. P. Herring says: a political party in U.S.A. is a vote catching machine or vote mobilising agency. In U.S.A. the political parties lack ideological commitment and rigid discipline in the organisation. But these two things are the basic elements in British political parties. Like Britain, the growth of party system in the U.S.A. is a matter of extra-constitutional growth. A close study of the American party system shows that the earliest reflections of the growth of party system had some emergence at the time of constitution-making. The founding fathers of the constitution were themselves divided on party lines. One group strongly favoured a powerful central government (Federalists) and the other group stood for more powers to the states (Anti-Federalists). In due course, the Federalist party came to be known as Republican party, whereas the Anti-Federalist party came to be known as Democratic Party. The Democratic party has enjoyed periods of power under great Presidents like Woodrow Wilson, Frankin D. Roosevelt, Harry S. Truman, J.F. Kennedy, Lyndon B. Johnson and Jimmy Carter. The Republican party remained in power during the presidencies of Lincoln, Theordore Rossevelt and Eisenhower. Thus the rise and growth of the two parties has led to the establishment of a biparty American political life. In modern political systems, the party system of every country has its own, Likewise, the American system also has some special features of its own. For

the American democratic government is party government. The American system resembles that of Great Britain in the existence of two main parties. Throughout the history of the United States two major parties have dominated the political stage. At present there are two parties - Democratic party and Republican party. Of course, "third" parties have appeared from time to time. In 1920 the Communist party was formed in the U.S.A. Three or four other minor parties also exist. However most of the third parties quickly disappear and none of them has ever come within the gun-short of victory in "national elections". Single - member constituencies with simple majority election favour the growth of two parties. They have had a similar effect in Great Britain. There is one more reason for the existence of two parties in U.S.A. It lies with the tendency of the Americans to be divided into two groups.

We have seen some similarities between the parties of the United States and Great Britain, viz., the extra-constitutional growth and the existence of two strong parties. However, there is one significant difference between the two. There is no ideological difference between the two major American parties. Robert Dahl once said that the American parties are known for their ideological similarity. There are no fundamental issues on which they may be said to be clearly divided. Their election platforms differ in phraseology rather than in ideology. In Great Britain the main parties have clearly distinguishable principles and programmes; but ideological lines are so thoroughly blurred in America that it is almost inaccurate to speak of a two party system prevailing there. In the words of Finer "America has only one party, Republican cum Democratic, divided into two nearly halves by habits and the contest for office, the Republican being one half and the Democratic being the other half of the party". An American belongs to a particular party primarily because his father and grandfather have belonged to it or because he lives in a region where the party has struck deep roots. In fine, an American party is a block of interests rather than a system of principles.

PARTY ORGANISATION

The organisation of political parties in the United States need special mention because they are national parties. But their organisational centre of gravity lies in the states and in the cities and countries. The party organisations in state and local level are more important than at the national level because, the elections are regulated and conducted by the states. According to the U.S.

Constitution, the members of the Senate and the House of Representatives must be residents respectively of the states and congressional districts they represent. So the state and local party organisations have a decisive voice in the nomination of candidates even for national office. The result is the national party organisation is relatively weak. This is in clear contrast with the picture in Great Britain where the strength of party organisation lies unmistakably at the top. The American parties are lossely organised. There is no flow of authority either up or down the scale with no genuine integration.

The party structure can be described in the following manner. Both the parties are organised in a pyramidal form. At the base of the pyramid the party organisation consists of the precinct, ward, city and county. The precinct is the basic unit of party organisation in America. There are about 1,30,000 precincts in the whole county and each one of it has 100 to 500 voters in it. They are the key men in the party organisation. A ward committee is usually the next level of party organisation in an urban area. Above the ward committee is the city committee which supervises the work of the party units in precincts and wards. Next in the party scale stands party organisation in county, consisting of a chairman and a country central committee. The county chairman wields considerable influence in appointment to state and federal offices within his jurisdiction. There are more than 3,000 counties in America.

At the state level, the party organisation comprises of a state central committee and a chairman. State Committees vary greatly in size and the method of their formation differs from state. It exercises general supervision over all party organisation in the state. They raise funds, organise and direct campaigns for elections and nominate candidates for some minor offices, and in some states select the state delegation to the national nomination convention which chooses party candidates for the offices of the President and the Vice-President.

At the national level, the National Committee is the principal organ of the party The National Committee of the Democratic party consists of two members-one man and woman from each state and territory. In 1952, the Republican party decided to add to its national committee the chairmen of the central committees of states. The chairman of the National Committee is by convention selected by the party's presidential nominee and is formally elected by the committee. He is an important man in the party structure. He is the party

campaign manager and directs and work of the party's national headquarters. The national chairman also controls the party's central office including a publicity bureau. He nominates an Executive committee which looks after the presidential election when it is at hand.

Though the national committee is the highest party organ, this is overshadowed in importance by the national convention, consisting of over a thousand delegates and an equal number of alternate delegates elected from the states and territories. It is the national convention that chooses party candidates for President and Vice-President and approves the party platform drawn up for the national committee.

The recent addition to the party organisation in the U.S.A. is the direct primaries. It plays an increasingly important part in the nomination of party candidates for elective offices. Three types of primaries are held in the United States. In the open primary used in 14 states, voters take part in the nomination of the candidates of all parties, irrespective of what party they themselves belong to In the closed primary only voters registered as members of a particular party take part. There is also the non-partisan primary in which all voters participate and the party affiliations of candidates are not indicated on the ballots. It is generally recognised that the direct primary method gives the rank and file of a party more effective control on the choice of the party candidates than the bosses of the party.

The working system of the parties in United States has become noteworthy for the rise of bosses and machines. They have well flourished in cities like New York, Chicago and Kansas. A "boss" is a professional politician who gains complete control of the party organisation of a city through corrupt methods. The office agents and workers through whom he captures the party organisation are known as his "machines". These bosses and machines which have perverted the forms of democracy and corrupted its roots in American political system is the ugliest feature of the country's party politics. The boss, with the help of his machines, controls a large block of votes within his jurisdiction and is in a position to "deliver" them on the polling day. He gains this power by rendering some services to the voters, such as finding them jobs, giving free gifts and so on. The boss, of course, does not forget to help his followers. Boss Tweed, one of the best known of this breed, who ruled New

Check Your Progress

6. Explain the Democratic Party Structure in USA.

ork from 1860 to 1871 was convicted on a charge of stealing 6 million dollars nd ended his life in jail. The most notorious political machine in America has een the Democratic machine in New York city, known popularly as Tammany fall. The origanisation was originally established sometime before the framing f the federal constitution, for benevolent patriotic purposes and was named fter Tammany, an Indian chief favour for his wisdom, his live of peace and his xemplary life. In due course, the Tammany society began to meddle in politics nd gained more and more control over election in the city.

6.10 PRESSURE GROUPS IN THE UNITED STATES OF AMERICA

In this age, the role of the pressure groups has become essential to the functioning of the American political system. Though the founding fathers had not wanted the growth of factions in a democratic society, they did realise that the rise of groups was an inevitable one. Thus, factionalism had its inevitable outgrowth in the United States. Today, in the United States; there are about 500 groups, big and small, operating at the state and local levels.

Like in other countries, American pressure groups have their own characteristic features. There are numerous pressure groups in the U.S.A. and they are autonomous to a great extent. The party system is too weak to keep the numerous groups in order. Not only this, the role of the political parties is sometimes determined by the groups in a political system. The principle of separation of powers has given ample scope for pressure groups to act. The pressure groups thus fix their attention to all centres of administration and decision making. It is basically different from the British System where there is no separation of powers as in the U.S. In U.S. the pressure groups "always try to influence the President as he is the virtual ruler of the country. The pressure groups turn to influence legislature only when they fear some frustration from the President. Sometimes, this may create a deadlock in U.S. (they call it i deadlock of democracy). If the pressure groups are not able to influence eithe the President or the Congress, they will try to influence judicial authority t make that executive order or legislative enactment null and void. It is for thi reason that "American pressure groups know no institutional bounds. The attempt to influence, by way of lobbying, any decision made by the Congres the Presidency, bureaucracy or the judiciary". The American pressure grou use the technique of lobbying to influence the members of the Congress w are concerned with the business of legislation. Lobbying has now engulfed

whole administration of the U.S. One Congressman has said "Lobbying is an essential party of the representative government and it needs to be encouraged and appreciated".

Since a number of pressure groups operate in the U.S., it is a very hard job to classify them. After a laborious work these groups may be classified into five types -Business, Farm and Labour, Professional, Ideological and Minorities.

The business groups occupy a more important place in the U.S. They have enough men and money power at their disposal. The Chamber of Commerce of United States and the National Association of Manufacturers are the best example of this category. The labour groups come next. Among these groups both the American Federation of Labour and Congress of Industrial Organisations occupy the most important place. Besides these two groups, there are a number of labour pressure groups, big and small, operating in the U.S. Then there are several professional organisations through which lawyers, attorneys, physicians, teachers, architects etc, achieve special representation for their interest. The American Medical Association and American Bar Association may be mentioned in this connection. Some groups may be said to have an ideological basis. The members of such organisations are motivated by their beliefs and values. Americans for Democratic Action and the American Civil Liberties Union are the examples of this type. The Negroes, Jews, etc form their own groups to protect the interest of certain ethnic, racial or religious communities. These groups are called minority groups.

The most interesting in the American pressure groups is the way of their participation in the political process of the country. They have adopted various techniques to promote their interest. These techniques are classified as social front propaganda and campaign. The social front is active by cultivating the acquaintance of many legislators. This type of cultivation of contacts may involve anything from simple entertainment to the payment of material awards. To influence public opinion, they propagate through mass media. At the time of election they will campaign and support candidates likely to be successful.

Though such techniques are adopted by the pressure groups, lobbying has a significance of its own. It has been described as a peculiar American institution. Lobby is nothing but to influence the decision matters. John F. Kennedy said, "lobbyists are expert technicians and capable of explaining

Check Your Progress
7. What is Pressure Group?

complex and difficult subjects in a clear, understandable fashion. Lobbyists prepare briefs, memoranda, legislative analyses, and draft legislation for the use by the committees and members of the Congress; they are necessarily masters of their subjects, and in fact, they frequently can provide useful statistics and information not otherwise available. Thus lobbyists have assumed an important role in the legislative process". Today lobbying influences every sphere of government. Some measures have been taken to regulate the working of lobbying. In 1946, the Federal Regulation of Lobbying Act came into being. It requires that lobbyists must register themselves with the clerk of the House and also submit accounts of their earnings through lobbying. Even this law has been found wanting. In 1926 the Senate has passed a bill placing tighter restrictions on the technique of lobbying and imposing severe regulations.

The critics point out that the American pressure groups follow an undemocratic way to meet their interests. Moreover, all interests are not represented equally through pressure groups. Current interests and international problems demand a coherent and stable over-all policy and this kind of policy cannot be achieved if every problem is tackled by different coalition of special interests. Though it has some demerits, its contribution to the successful operation of American democracy is undeniable. They take care of the interests in the society to which the political system must respond. Pressure groups thus offer an important supplement to the official system of representation. Thus, the pressure groups occupy a unique position in the American political system.

6.11 ELECTIONS IN THE UNITED STATES OF AMERICA

In the U.S. the Congress has two chambers - Senate and the House of Representatives. Senate is the upper house and the constituent states have equal representation; but the people are represented by a varying numbers of representatives in the House of Representatives. The 17th amendment of the constitution adopted in 1913 provided a direct method of choosing the senators.

The relevant Article reads: The Senate of the U.S. shall be composed of 2 members from each state elected by the people thereof for 6 years; electors in each state shall have the qualification requisite for electors of the most numerous branch of the state legislature. The Congress has the power to prescribe the method of conducting the election, including nomination of candidates. But, according to the established practice, candidates for election to the Senate are

nominated according to whatever procedure has been laid down by state law (in most cases direct primaries but in some cases by conventions) Section 6 of Article I says that each House shall be the judge of the election, returns and qualifications of its own members. It means that a newly elected senator cannot take his seat until the Senate has adjudged him to have been properly elected and qualified.

The House of Representatives: As a matter of fact there is no national suffrage in the United States. The conduct of election right from the registration of voters to the declaration of results is controlled by the states. Each state has its own electoral laws and regulations. The 15th amendment of the constitution says: The right of citizens of the U.S. to vote shall not be denied or abridged by the U.S. or by any states on account or race, colour, or previous servitude. The 19th amendment provided for women's suffrage.

Qualification for Voting : The basic requirement is citizenship. The minimum voting age is 18. All the states have prescribed a certain minimum requirement of legal residence ranging from 6 months to 2 years. In many states there are some additional requirements such as ability to read and write, payment of tax, registration in time and absence of any disqualification. The common grounds for disqualification are disenfranchisement for election frauds or serious crime.

Electoral Regulations: They may be broadly grouped under four heads-suffrage, registration, election procedure and campaigns. Regarding suffrage, it has been discussed above. So far as registration is concerned, no one is registered as a voter for national election. Each state provides for registration of voters for the lower House of its legislature and the same list is used for national elections. In some states, the voters have to get themselves registered every year, but in most of the states there is provision for permanent registration. The election procedure includes the formation of electoral districts, appointment of returning officers, use of different kinds of ballot, use of voting and counting machines etc. Election campaign precedes the polling.

In U.S. election to the office of the President and Vice-President takes place every (leap) fourth year. The election of 1/3 of the senators takes place every second year and elections of the Representatives takes place every second year. It means that every alternate year is a year of election in the United States

though every fourth year has a special significance due to Presidential election. This is what the Americans call the election year.

6.12 BUREAUCRACY IN USA

A study of the bureaucracy in the political system of the United States has its own importance. If a head of the department is competent, and has first-rate executive ability, then he can spare the President much time from worry. Thus, the bureaucracy is as much a part of the total policy-making process as are other sub-systems of the political system.

The American Constitution is sent about the bureaucratic system. Congress shall make laws for the creation of executive departments and the President shall make appointments to that department with the concurrence of the Senate. Today, the federal executive consists of the President and his secretaries and thousands of other officers. The early Presidents appointed executive officers, though with the consent of the Senate, and removed them at their will. It led to the initiation of spoils system. President Washington established the tradition of making appointments on the basis of competence. But the later Presidents followed their own way to get their own men into the administration of the country. This great tragedy focussed public attention on the rotten fruit of the spoils system. Everyone could see that the practice of sheer nepotism or spoils system had destroyed the efficiency in the administration. Thus, the way was opened to the introduction of the merit system. The inauguration of the merit system had its start with the making of the Pendleton Act in 1883. It established a Civil Service Commission and authorised a gradual transition from the spoils system to one based on the merit of the candidate. The Civil Service Commission is a non-partisan body consisting of 3 persons and they are nominated by the President with the consent of the Senate. It is primarily a staff agency that advises on policy matters relating to the selection of personnel to the administration and it conducts examinations for the recruitment of personnel for the administrative machinery. The commission functions through the civil service regions each with an office in a central city. Here two things should be remembered : that, the top level executives such as heads of departments, bureau chief etc, are not covered by the Civil Service Commission and some organisations like the Tennessee Valley Authority have their own Civil Service Commissions.

Like Britain, the executive department of the United States consists of political and non-political executives. The President and his colleagues form the first category, while the top officials form the next. The former i.e., the political executive always depends upon the non-political executive because they are 'experts' in administration by virtue of their being highly educated and trained, and selected on the basis of merit. Though the president is charged with the duty of defending and protecting the constitution, he is bound to bank upon the active and sincere co-operation of the heads of executive department. It leads to the conclusion that the permanent executive plays a quite important part in the political system.

In simple terms, bureaucracy may be described as a large organisation that employs divisions of labour, a hierarchical structure, formal rules and regulations, impersonal rational relationships and competence as a basis of employment in order to achieve the greatest possible efficiency. Here the structure of the American bureaucracy draws our attention. It has four tiers- executive departments, independent regulatory commissions, independent agencies and governmental corporations. There are 12 executive departments each headed by a secretary. They collectively form what is called the cabinet. The secretaries are appointed by the President with the consent of the senate. The President can send them out at anytime without any reasons. They are mere palace guards of the White House. Under each secretary, there are a number of offices, boards, divisions, bureaus etc. Each is responsible for a particular specialised area. Then there are independent regulatory commissions that are headed by boards or commissions and not by a single individual. The members of these bodies are appointed by the President for set terms. The commissions are appointed by the President for a term of five or seven years and they cannot be removed from office by the President. Statutes have given these bodies enough leeway in establishing standards and guidelines. Then there are independent agencies headed by commissions though they are not primarily engaged in the regulations of economic activities. Finally, there are government corporations controlled by boards and commissions that enjoy a considerable amount of autonomy from the rest of the political system, in organisation and activity, these bodies resemble private corporations.

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8. What is Spoils System?

The role of bureaucratic activities in the American political system may be classified into three important directions. First, they generate support for

the political system. By applying general rules to specific situations, the bureaucracy comes into direct contact with the man in the street. Thus, it moulds the attitude of the men towards the political system. If one found administrators as honest and efficient or corrupt and prejudiced, it goes a long way towards determining his support or otherwise for the political system. Second, there is the area of conflict resolution. While issuing direction for the implementation of an official decision different and conflicting situations develop and the people fight for the interpretation of a rule in their own interests. They may also take the matter under controversy to the court for a proper and authentic settlement. Finally, the units of bureaucratic structure play a minor role creating legitimacy by taking action in the name of its authorisation by the President, the Congress, or the courts.

In reality, the bureaucracy is the decision-makers in the American political system. They are the men who execute the laws. Their will also influences the legislative sphere.

BUREAUCRACY AND PRESIDENT

There is a two-way traffic so far as the relationship between the President and the bureaucrats is concerned in respect of influencing each other that has its definite impact on the process of decision making. There are several means whereby the President may enforce his demands on the bureaucrats. The tool of Budget, which is part of the presidency, plays a general supervising and co-ordinating role over the bureaucracy. The powers of making top appointments, skillful use of rewards and sanctions are some useful instruments in the hands of presidents to influence the bureaucrats. Above all, funding their budgets or losing a desired programme are the "two possibilities that help to keep bureaucratic officials eager to please the President and certain persons and agencies in the presidency".

Likewise, the President may also be influenced by the bureaucracy in some respects. Facts illustrate that today no President can exercise a full check on the role of bureaucracy and, as such, he may take many things for granted. So many must report to the President that he is deluged with information that must be predigested by staff members before he can absorb it. Some hostile staff members of bureaucracy may conceal their mistakes for quite a long time. 'Although vigilance by presidential advisers, departmental heads and bureau

chiefs is a safeguard, incidents inevitably occur that embarrass the President or make him appear to be out of touch with his own subordinates. Further more department heads and bureau chiefs" may sometimes openly contradict the policy stands of the President; or worse still, unsympathetic bureaucrats may undermine his policy".

BUREAUCRACY AND CONGRESS

Likewise the relationship between the Congress and the bureaucracy is like a two-way traffic. Before making decisions the bureaucrats must frequently ask themselves what the reactions of the congress are likely to be. There are three ways of congressional control over bureaucracy. (1) The congress controls the purse of the nation whereby it sanctions grants to various departments. (2) The general power of the congress relating to programme authorisation and amendment and (3) the committee system in which the senior members of the federal legislature act as chairmen and thereby force the bureaucrats to have good relationship with the legislature. The legislature may cut funds if the bureaucracy has forgotten to cultivate a favourable relationship with certain congressmen. It is found that most of the departments and agencies of national government attempt to maximise their influence and go to the extent of lobbying the legislators. In 1962 President J.F.Kennedy's Secretary of Health, Education and Welfare spent $3,562 in sending telegrams to congressmen to gain support of pending legislation that led to severe reprimand.

Likewise, the bureaucracy has also influence over the interest groups and through which the bureaucrats get their things done. The result is that the interest groups are ready to give any help if they can and form a united front with the bureaucracy whenever the programme is threatened by budget cuts or other curtailment. The bureaucracy not only influences the executive or legislative processes but also the financial sphere.

Thus, the public service in the United States and its role in the political process of the country has not been immune from politics. Spoils system can be checked, though its ramifications have not been fully eradicated. The 'loyalty programme' started by President Truman in 1947, has done a lot of damage to the spirit of the merit system.

Check Your Progress

9. Discuss the relation of Buracracy with President.

The creation of a Loyalty Review Board by Truman under the agencies of the civil service commission to handle cases arising out of the loyalty review

programme acted like a service of fear until it was abolished by Eisenhower in 1953. This situation still remained unchanged as the final responsibility for dismissing federal employees as security risks came to be placed in the hands of department and agency heads. Even today, the civil service commission directs and co-ordinates background security investigative activities. The loyalty review system has certainly undermined the political neutrality of public services.

Apart from this the Americans are faced with the problem of controlling the bureaucracy. Several demands have been made to abolish the various independent regulatory commissions and agencies or the powers of each be carefully examined and redefined. Everyone believes that the President can take steps to check the powers of bureaucracy. But Presidents have been frustrated in their efforts to control the bureaucracy and to keep various executive agencies working in harmony. Due to the vast nature of the federal administrative apparatus, there are many points of resistance and many breakdown in communication.

The net result of all this is that bureaucracy has come to have the position of a 'fourth estate' of the American political system.

6.12 STRUCTURE AND FUNCTION OF LOCAL GOVT. IN U.S.A.

America follows a federal system. The Constitution establishes two sets of government - the national government and the governments of various states. The local government has neither been assigned to the federal government nor prohibited to the states and as such belongs to the state. The power of establishing local government is exercised by the state legislature. Professor Alderfer observes, "while each state has its own system of local government, there are many similarities. For the fundamental principles and institutions of local government are common throughout the United States, But there is a wide variety of forms and practices depending upon history, .experience and conditions. Thus, both stability and flexibility, so essential to governmental success anywhere and at anytime, are basic qualities of American local government.

From the above definition we can understand that all units of local government in United States are created by the state governments. The

legislature determines their organisation and powers. It is laid down in the fundamental law called the charter. This is also supplemented by number of legislative Acts both general and special, affecting the form and duties of the city government units is not federal but unitary.

TYPES OF LOCAL GOVERNMENT

The local government units in United States can be divided into two main categories, namely Quasi-Municipal Corporations and Municipal Corporations. The former are created by the state or by the county acting as agent of the state which includes counties, towns, and township. The second category of municipal corporations includes cities, incorporated towns, droughts and villages. These units have been created primarily in response to local initiative whereas the former types of local units are created regardless of local opinions. It is rather a difficult problem to tell the number of local government units in the United States, because every year some new ones are created and some others disappear. Even in the different types of local governments they differ from state to state. One type of local government institution prevalent in one state may not be applicable to another state. The units of U.S. local governments are as follows:

THE COUNTY

The whole area of United States is divided into counties for the purpose of local government. There are now more than 3,000 .counties in the United States. The governing body of the county is known as Board of Commissioners, Board of Supervisors, and a Police Jury. The governing body is always elected with a term ranging from two to four years. The governing authority of the county can be divided into main categories, one is the board and the city ward within the county. The board consists of supervisors ranging from forty to fifty members. The other type of ward is also a board consisting of a small member of Commissioner, elected by the voters.

Generally, the County Chairman is elected by the County Board. The board meets once in a month and the various work of the county is carried on by the various Committees that it maintains. The meetings of the county board take place at the court house and court house is the name given to the headquarters of the county government.

POWERS AND FUNCTIONS

Since the counties are created by the state government, they possess only such powers which have been conferred upon them by their creating authority. The county has to perform two types of functions: 1) agency functions: these functions are performed by the county on behalf of the state government. The second type of functions are purely local in nature. The functions of the county may be described as follows :

1. Custody of county property, such as courthouse, jail, almshouse, hospital, library.

   Leasing and erecting other buildings needed by county officers and services.

   Giving contracts for printing and for furnishing equipment for county buildings, office supplies, and materials used in county institutions.

   Setting claims and passing upon the allowances of all bills and accounts where there is no county auditor or comptroller;

   Appointing and to a more limited extent removing, county officers, assistants and deputies to such officers and many employees.

   Licensing of certain trades and occupations, such as liquor selling, operating hotels and inns auctioning and peddling.

   Organising township, school and road districts and other country sub-divisions created for special purposes.

   Controlling the location, construction : and repairs of highways, the construction and maintenance of bridges, and in some states the provision and protection of airports.

   Undertaking public works like levees, kides, drainage ditches and irrigation of airports.

   Supervising the county's poor relief and other charitable work.

IY GOVERNMENTS

The most important units of American local government are the cities. he city governments are equal to the Borough governments in Great Britain.

These organs enjoy considerable powers man the rural units. The local affairs of each city are administrated under a 'charter', which is either conferred upon it by the State Legislature or by the municipal 'home rule' which is framed by the city itself. This charter is like the constitution of a state. Under their charters the American cities are divided into three different types. The old and the popular one is the Mayor-council form. Under this type of the city government, the Mayor is an independent elected chief executive. He appoints all the heads of the executive departments with the approval of the Council. The Council acts as the legislature of the city government and passes the ordinances which are introduced by the Mayor. The Council also passes the budget which is prepared by the Mayor.

Another type of the city government is the commission form of government. In this type there will be an elected commission consisting of three to seven members who collectively exercise the powers of government. The administration and the functions of the city government are divided into department and each member of the commission heads one of them. Nearly most of the American cities with a population of 10,000 or above had the commission form of government. There is also a provision for the election of a mayor to head the administration of the city government. In some cities the mayor is generally elected to a specific position, mostly the commissioner of public affairs. But this system is losing its importance due to lack of co-ordination.

The third type of city administration is carried through City Manager type. The City Manager type of government has, in Griffith's opinion "attracted worldwide attention and has made a really outstanding contribution to the science of municipal government and administration". Under the City Manager type there will be an elected council which is the rule making authority of the city. The council also adopts the budget and appoints a professional administrator as Manager. The Manager appoints heads of the departments, frames the budget and presents it to the Council and makes recommendations with regard to policy either on his own initiative or when invited by the Council to do so. The City manager system is considered to be the most successful one.

POWERS AND FUNCTIONS

In every city, the council has a wide variety of- powers. Much of the time of the council is spent in the making of ordinances for the local government of the city. First among the general powers "police powers" is very important. The city charter usually provides that the council may exercise the "powers necessary to preserve the peace and good order of the community and promote the public welfare". Secondly the City Council may make ordinances relating to health, parks and fire protection. Thirdly, the city council also makes ordinances relating to beggars, vagrants, fighting and disorder in the streets, public amusement, intoxication, markets, gambling, bathing places, suppression of immorality, the use of the fire-arms etc, Finally the council can appoint and remove the chief administrative officer of the city.

In the matter of finance, the powers of the city are limited. They are limited by the State governments.

THE COMMISSION GOVERNMENT

Another type of city government prevalent in the United States is the Commission Government. In this type each Commissioner is heading a department or division head of the city government. Thus collectively the Commissioners constitute the city Council. Therefore under this type Commissioners are in a dual capacity. Collectively they are city's legislative body for the determination of policies and individually they serve as administrative heads of the city government. The Commissioner gets higher salary than the Councillors under the mayor council plan. The Commissioners are elected by people.

The Mayor is selected by Commissioners. In some other cities the Mayor is generally elected to a specific position, mostly the Commissioner of public affairs.

TOWN LOCAL GOVERNMENT

In six states of the United States of America, the counties are divided into towns. The town has a government which is unique. The towns are not incorporated separately and so do not have individual charters. They enjoy powers under general grant of legislative power and are quasi-Corporations. These local governments can use and be used, levy taxes, borrow money and pass ordinance for the good government of the locality.

In the town the governing body is called the town meeting. It is composed of all qualified voters of the town. All powers belonging to this unit of local government are exercised by the town meeting or by its agents acting on its behalf. The town meeting is convened once a year and other special meeting may also be called as necessary. The town meeting passes bye-laws, approves budget, etc. The town meeting selects three or five persons who constitute the executive committee. These persons are called selectmen and are elected for a year or two. In some units they are elected for three years. These selectmen have no power to make bye-laws and their main function is to carry-out the orders and enforce the policy of the town meeting.

The important functions of the town are to provide school facilities and protect public health. They exercise control over police, water supply, roads, and bridges, parks, gardens, hospitals, libraries and markets.

TOWNSHIP

In some of the states, outside New England, the countries are divided into townships. It is an artificial creation. The functions of the township are carried out by the town meeting. In some of the states there are no township meetings and the function of the township are carried out by the township officers. These officers are elected directly by the people and questions are submitted to popular referendum. In the township the clerk is an important officer. He acts as secretary of the township meeting.

POWERS AND FUNCTIONS

The township enjoys certain powers which have been granted to it by the state. It may control school, poor relief and highways. Regarding the police power the township has very limited powers. In some township, they perform certain other functions also. They establish parks, libraries and cemeteries and maintain irrigation, hospital, street lighting and fire fighting facilities.

THE VILLAGE OR BOROUGH

When rural area becomes a semi-urban a special type of local government is organised. They are called villages or boroughs. The government authority of a village is a board of five to seven persons who are elected. Generally the term of office is one year but in some cases the term is two years. The chief executive officer of the village is the President. The village staff includes the village clerk, a treasurer and a constable.

Check Your Progress
10. Explain the Structure of Local Govt. in USA.

POWERS AND FUNCTIONS

The power of the village includes such things as the power to establish a fire department, and appoints policemen, to lay out and construct street and sewers. It also builds and maintains side walls. The other functions of the village are : it prohibits gambling or license, maintains water works, parks, libraries and community centres, levies taxes and issues bonds for these purposes.

SUMMARY

In this unit we have learnt the role, functions and organization of Congress and also the role of speaker in the House of Representatives. Senate of America enjoys extensive powers. How a bill is passed? What are different stages? These are the facts explained. In the modern democracy Judiciary play a very important role in protecting the rights of people. The power of Supreme court s to require whether a law or executive order is in conflict with the basic law. So that he can declare it as unconstitutional. This power of the supreme court has made a significant contribution to growth American constitution. American party has set an example for world democracy. In America the two political parties has gone into depth. These two parties form the basis for democracy. Both the political parties play a important role. They use propaganda as a method. The role of pressure groups and the defects are discussed. Without Public servants no government can not function. The analysis here is whether the public servants do the work efficiently. There are suggestions for the removal of defects of public service. The Local government works efficiently under the states' control. The local government beyond the influence of political parties.

KEY WORDS

Senatorial Courtesy - Filibustering - Pocket veto - Lobbying - Pork-barrel and log-rolling - Cases and controversies - Judicial review - Writ of certiorari - Bi-partism - Cross voting - National Association for the advancement of coloured people - Congress of Racial equality - National council of churches - Spoils system - Bureaucracy - The county - City Manager Type

ANSWER TO CHECK YOUR PROGRESS

For Question No 1	Refer Section 6.2
For Question No 2	Refer Section 6.3

For Question No 3	Refer Section 6.5
For Question No 4	Refer Section 6.7
For Question No 5	Refer Section 6.8
For Question No 6	Refer Section 6.9
For Question No 7	Refer Section 6.10
For Question No 8	Refer Section 6.12
For Question No 9	Refer Section 6.12
For Question No 10	Refer Section 6.13

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MODEL QUESTIONS

1. Senate is a powerful second chamber - Explain
2. Estimate the strength of committees in the law making.
3. Discuss the role of the institution of judicial review in the American political system.
4. Evaluate the party system of American Political System.
5. Describe the British pattern of local governments and explain their functions.

UNIT - 7

GOVERNMENT OF FRANCE – FREATURES OF FRENCH CONSTITUTION – EXECUTIVE: PRESIDENT

INTRODUCTION

In Europe, France was the first country to follow the Parliamentary Democracy following England. But France was unable to provide the peaceful atmosphere like Britain between the years 1791 and 1870, there were 11 constitutions in France. In the year 1958 Fifth Republic was established which continues even today. The features of V Republic will be discussed. French Constitution is a combination of Parliamentary and Presidential system. But Presidential system is given more importance than parliamentary. The president of Fifth Republic stands in between the American President and British Queen. Under the fifth republic Prime Minister is having a important role and position. He is next to the President. The issue of colonialism was the death knell of IV Republic. The colonialism came to an end in June 1958. General Charles De Gaulle appeared in the scene. The National Assembly handed over its law-making power to De Gaulle. V Republic emerged in October 1958. In this unit we have analysed the powers and functions of President, Prime Minister and Council of Ministers.

OBJECTIVES

1. To trace the constitutional development in France.
2. To understand the features of V Republic of France.
3. To learn about the powers of the President of V Republic
4. To understand position of the Cabinet and the Prime Minister.

STRUCTURE

Land and People

Political Culture

Basic Features of the Constitution

7.1 LAND AND PEOPLE

For a variety of reasons French political system deserves a close study. It is the country where the Great Revolution took place in 1789 for realizing the ideals of "liberty, equality and fraternity". It is the country which proclaimed to the world the "Declaration of the Rights of Man" in 1791 that marked the inauguration of representative democracy. However, in the period following the Revolution, the people of this country made several experiments with republican system, interposed with the entry and exit of autocratic governments like that of the Directory under Napoleon Bonparate and the restoration of the Bourbon dynasty until the latter's termination in the revolution in 1848. Since the Revolution of 1789, this country has had 16 constitutions under which many experiments took place all revealing the conviction of the people in the political axiom that "a parliamentary government is a representative government whereas monarchical government is not. Democratic government must be both Parliamentary and Republican".

Territorially, France is a small country of Europe, occupying 13th position among the countries of the world. Its total area including Corsica, now stands at 551,662sq.kms. To, the east, south east and south west lie high mountain ranges that mark French borders with Switzerland, Italy and Spain. The small Jura mountains flank the French Alps to the north.

France in one of the most populated countries of Europe. However, the lensity of population in mainland France is still relatively low when compared to hat of its neighbours, namely 25 inhabitants per sq.km, as against 216 in Britain ınd 218 in West Germany. Increase in population has been due to large influx of mmigrants especially from Algeria, as well as foreign workers accompanied by heir families. The pattern of demographic growth has been influenced by the ɔost-war population growth and has been marked by the ravages of the two world ⱳars that caused a depletion of certain age groups and a dip in the birthrate.

By religion most of the people of France are Christians. About 90% are Roman Catholics, 2% Protestants 2% Jews and the remaining 6% either practise ıo religion or belong to minor sects. These figures, however do not offer an insight into the number of people who actually practise religion. Out of the 90% Catholics, only 7% claim to believe in God. 40% has faith in the divinity of Jesus Christ and only 20% practise the religious obligation of the Catholics. Though there is some sort of religious homogeneity, France has accepted the principle of secularism. Ever since 1905 when the separate Law was passed churches in France have been separated from the state. According to this law, the Republic "ensures the freedom of conscience and guarantees the free practice of religion. It does not recognise pay or subsidise any particular religious faith except in Alsace Lorraine where the state pays the salaries of the priests.

7.2 POLITICAL CULTURE

France, being a leading democratic country of Europe, has its own political culture whose essential can be traced to what the French people proudly call "Republicanism". Though the term "Republicanism lacks a precise interpretation, its generalised implications can be visualised in several important phrases like the 'sacred right of insurrection', 'the rights of man and citizens', 'popular sovereignty', 'equal and secret ballot', 'a secular democratic and socialist republic'. Owing to this it is not easy to describe with any degree of precision what constitutes the Republican tradition, because it is not a series of dogmas but rather a number of beliefs about the kind of relationship that ought to exist between state and citizen and between government and legislature. These beliefs go very deep, because Frenchmen have had to fight and die for them so often in their history.

Check Your Progress

1. Discuss the Political Culture of France.

A French writer, Dorothy Pickles points out three principles underlying the French republican tradition. There are:

i. An insistence on the importance of the individual and on his right to certain fundamental freedoms.

ii. Exaltation of the popularly elected assemblies as against second chambers and government.

iii. A constitutional attitude characteristic of the Republicans and anti - Republicans alike. It is an attitude of political rigidity caused by the sense of constitutional -, instability.

Prof. Roy C. Macridis enumerates the essential traits of the French political culture as follows:

LIBERALISM

It favours limitation upon the state, advocates a laissez faire economy, individual rights, political freedom, and parliamentary democracy.

RADICALISM

It is the heir of the Revolution. It retains a deep faith in the government by the people and their representatives and is suspicious of all vested interests. Like liberalism, it distrusts the state and its instrumentalities notably the civil service and the executive. It is anti-clerical and invariably supports the supremacy of the legislature.

CHRISTIAN DEMOCRACY

It accepts the separation between church and state, but encourages the active participation of lay Catholics and priests in solving concrete social and economic problems. It urges social welfare programmes, economic controls and equitable distribution of incomes.

INDUSTRIALISM

It takes its clue from the early 19th century writer St. Simon. Its contemporary variant is referred to as "technocracy" government by the experts and technicians.

SOCIALISM

It has traditionally advocated control of the means of production by the state, but has espoused the Republic and its representative institutions.

GAULLISM

It is basically different from Bonapartism, it implies that one man can break through the contradictions of the political system, bypass the political parties and the various representative groups and establish direct contact through referendum and plebiscite with the people. It favours personal rule by a strong leader viz. Charles de Gaulle.

It should, however, be noted here that all the above-mentioned traits of the political culture of the French people boil down to a simple fundamental point viz the frantic search of the French people to bring about a reconciliation between the authority of the state and the liberty of the individual. The state is a symbol of French greatness and national unity. It has been the object of veneration and sacrifices; but it has also evoked suspicion and hostility. Thus, the authority is both valued as a symbol and instrument of national unity and feared as a vehicle of power that may oppress or enslave the individual.

7.3 BASIC FEATURES OF THE CONSTITUTION

The Constitution of the Fifth Republic came into force on October 4, 1958. This constitution was drawn up by a committee appointed by Charles de Gaulle in June 1958. It was approved at a referendum held in the French Republic and Overseas Departments and Territories on September 28, 1958.

The French Constitution of 1958 contains a preamble and 92 Articles, grouped in 15 titles. The Constitution has been variously described as "tailor-made for General de Gaulle, quasi-monarchical, quasi-presidential, a parliamentary empire, unworkable, the worst in the French constitutional history and the like. It is indeed, difficult to summarise the main features of the Constitution. Yet, the following may be considered as its main features.

1. The Constitution of the fifth Republic is, in the words of Dorothy Pickles, an untidy constitution. The text of the constitution does not contain provisions regarding a number of extremely important institutions. The Constitution is in some places vague, and in some others, ambiguous. It

Check Your Progress

2. Bring out the Basic Features of France Constitution.

is difficult to decide the exact meaning of a number of Articles. There is also the additional difficulty in describing the institutions of fifth Republic. Under the special powers conferred on the government, ordinances can be promulgated which will, when promulgated, modify considerably the administrative and judicial framework of France.

2. The Constitution combines two different principles. The first is the principle of Republican Parliamentary Government. The Constitution provides for a democratic and parliamentary system of government. The Constitution provides for a democratic and parliamentary system of government. Theoretically, the head of the state and the legislature are elected and the judiciary is independent. The Constitution has considerably reduced the powers of the Assembly in the interest of the stability of the government. Though the legislative supremacy of the Assembly is retained, the government too possesses exhaustive powers to make rules.

The second principle of the Constitution is that of personal leadership. At the instance of De Gaulle, a number of provisions has been included in the constitution to ensure his personal leadership. De Gaulle argued that the head of state should be a representative of the nation rather than of Parliament. The positive role of the President has been expressed in the constitution by dividing the executive powers between the President and the Prime Minister. The President has certain powers to exercise in normal circumstances and certain powers to be used in times of emergency.

3. Another notable features of the Constitution is the separation of legislative and executive organs. Though the President is the real executive head, he is not accountable to the legislature, but the Prime Minister and his ministers are responsible to the legislature without being members of either house. The legislature may remove the Prime Minister and his ministry from office by a no-confidence motion.

4. The Constitution establishes more a quasi-presidential than a quasi-parliamentary model of government. The authority of the President is far more extensive than that of the Prime Minister. The President is not a titular head of state like the English monarch, but the real head of state

like the American President. In fact, he is more powerful than the American President in certain respects.

5. Another feature or the Constitution is the recognition of the role of political parties. Article 4 of the Constitution recognises political parties as normal constituents of political life. But the parties are "required to respect the principles of national sovereignty and democracy". The Constitution implicitly makes one-party government unconstitutional.

6. The Constitutional Council is another innovation of the V Republic. The Council decides the constitutionality of government or parliamentary Acts.

MODE OF AMENDMENT OF THE CONSTITUTION

The Constitution of the V Republic contains a special procedure for its amendment. A proposal to amend the constitution may emanate from the President or from the Prime Minister or private members of the legislature. The proposal must first be voted in identical terms by both Houses. If the President desires so the proposal could be passed at a joint sitting of both Houses by a 3/4 majority. In that case there is no need for referendum. The Republican form of government is not subject to amendment. No proposal to amend the Constitution could be initiated when the territorial integrity of France is in danger. The Articles concerning the procedure for amendment of the Constitution are full of ambiguities.

7.4 THE PRESIDENT

The operation of the executive organs is shaped by many factors. But a traditional and still useful method of comparing the behaviour of those organs is by examining the relationship between them and the legislature. In the developed democratic system a number of different types of executive organisations can be distinguished. In the general classification of constitutions the Quasi-presidential type of executive is also one. It is a peculiar mixture of parliamentary and presidential models. In this type, the President is entrusted with real powers. At the same time, it provides for a prime minister and a cabinet accountable to Prime Minister. The President appoints the

Prime Minister, and on the advice of the Prime Minister, he appoints other members of the cabinet. The Prime Minister and his cabinet however, shall be responsible to the Parliament. The best example of this type is the French executive system.

The elements of a Presidential government are traceable in the Constitution of the Fifth Republic. The President is the real executive head with wide powers. He has wide powers of control over the legislature, including the right to dissolve it. In the event of a vote of censure passed by the Parliament against government, the President can dissolve the National Assembly and call for a new election. The ministers are not allowed to become members of the legislature. The President may take drastic steps if there is a threat to the institutions of the Republic. Under these conditions the governmental organisation of France "could, perhaps be more properly described as a semi-Presidential system, based on atleast a partial separation of powers".

At the same time the elements of a Parliamentary form of government are also traceable in the French constitution. The Constitution provides for a Prime Minister with a council of ministers who must have the confidence of the Parliament. The President is empowered to act with the help and co-operation of his Prime Minister and his ministers. The members of the Parliament may put question to the ministers and censure the conduct of the government. Though the Prime Minister is appointed by the President, the Prime Minister has to seek a vote of confidence in order to show that a clear majority is backing him in the Parliament. The Parliament, may also discuss the conduct of the President and remove him by the process of impeachment. Though it is true that the French political system presents a queer mixture of both the English and the American models, it is more of a quasi-Presidential type because the President is too powerful in the French political system. Today the President rather than the Prime Minister is the chief director of policy. He has unquestioned control over the matters such as foreign, military and defence affairs. De Gaulle used the referendum on a number of occasions to seek popular approval for his policy decisions. In fact the Fifth Republic is a regime somewhere between the British and the American models, because the President and the Prime Minister constitute a double executive. Such a sharing of executive powers can only be successful and the system can work harmoniously only if the Prime Minister is prepared to accept the policy of the President when difference of opinion arises.

For instance, in 1976 the disagreement between the President and the Prime Minister led to the later's resignation. The conflict between the two executives arose not only over specific policy issues but also because the Prime Minister opposed the President's intention to establish a more 'Presidential' style of government and to reduce the scope of independent action by the Prime Minister.

The French governmental system exhibits both the Presidential and Parliamentary models as found in U.S.A. and Britain respectively. But it gives more weight or it tilts towards the presidential form like the U.S.A. As Neumann says: "The Constitution greatly strengthens the executive and diminishes the role of Parliament." Though the executive branch is still dual, having a President and a cabinet under Prime Minister, the major emphasis is now placed on the President of the Republic" and not on the Prime Minister. The President of the fifth Republic of France is neither like a constitutional Monarch of Britain nor is a replica of the American President, but he occupies a half-way House between the two. The reason for this may certainly be traced in the serious problem with which the nation was confronted on the eve of the termination of the Fourth Republic. The fathers of the constitution thought that only a strong President would be able to meet that situation. So they made the President the "keystone of the new Republic; he is the symbol and the instrument of reinforced executive authority" .

7.5 ELECTION

The original Constitution provided that the President should be elected indirectly by an electoral college for a period of seven years. The electoral college was composed of nearly 80,000 electors. Now, after 1962, the President shall be elected by universal suffrage with a second ballot or "run-off" system. Under this system, a candidate must obtain absolute majority of the electoral college either in the first or in the second round in order to win. The Present electoral process is as follows. First the name of the candidate must be endorsed by 100 "notable" members of the Parliament and by making a deposit of 2000 francs. This deposit of 2000 francs would be forfeited if he fails to get 5% of the votes polled. The candidates securing more than 5% of the polled shall also receive a grant of 20,000 francs in lump sum to meet their election expenses. Every candidate shall be given an equal time to make use of radio and television for their canvassing. If no candidate wins more than 50% votes, the election shall take place again within next two weeks in which only two candidates,

having the highest number of votes, shall be allowed to take part. In 1979 election De Estaing was declared successful in the second ballot only. The Constitution is however, silent on many important points. For example, it nowhere mentions the age, length of residence and number of tenures of a candidate.

7.6 POSITION, POWERS AND FUNCTIONS OF PRESIDENT

The actual position of the French President is a matter of debate. He is meant to be the Head of the State. If France has a Parliamentary system of government the position of the President despite his being formidable remains like the Indian President; on the contrary it is asserted that France has a peculiarly Presidential system of government. The real power is in the hands of the President. He keeps the Prime Minister as his nominee and reigns as well as rules. As the "arbiter" the President is the custodian of the Constitution. Article 5 of the Constitution says "The President of the Republic shall see that the Constitution is respected." Secondly, the President is the virtual master of his council of ministers. He not only presides over the meetings of the cabinet, he can also veto its decisions. The position of the Prime Minister is extremely delicate. He must support the President or face his downfall. More important is the arrangement of "counter-signature". It is stipulated in the Constitution that the acts of the President excepting appointment and removal of the Prime Minister and other Ministers, decisions to hold a referendum and like other things, must be countersigned by the Prime Minister and other ministers. But the astonishing feature of the French constitutional system is the responsibility of the Prime Minister and other Ministers and" not that of the President. The National Assembly can pass a vote of censure against the cabinet, but not against the President of the National Assembly and the Senate is a mere formality. The decree of the President in this direction does not require approval of any other agency. The only limitation on the power of the President in this regard is that the new Assembly cannot be dissolved before the expiry of one year. Next, there is the provision of referendum where the President can act in his discretion or on the recommendations of the government if he so pleases. In other words, he can refuse a referendum proposed by the government. However, the President must not take an injudicious step in the regard.

Article 16 of the French Constitution deals with the emergency powers of the President. It may be otherwise called "advice for a legal dictatorship".

Although the President is constitutionally required to consult four agencies, i.e., the Prime Minister, the Presidents of the two Houses of the Parliament and the President of the State Council he is the sole judge to determine whether the circumstances warrant the use of emergency powers or not. Once the President is armed with the emergency powers he can do anything save amending the Constitution or dissolving the National Assembly. The President is the "guide" of the nation. He is tha final source and holder of the power of the state and the only man to hold and delegate the authority of the state.

In a word, the President occupied the most celebrated office in French political system. He is the President of the Republic as well as of the entire French community. A close look at the functions and powers of the President of the Fifth Republic brings home the fact that his authority is "formidable". Apart from the executive and legislative powers the French President has emergency powers. The President is politically not responsible for acts carried out by him in pursuance of his functions.

First, we discuss the executive functions of the President. The President is both the head of the state and of the government. He appoints the Prime Minister and other ministers. He presides over the council of ministers and .signs ordinances and decree as decided by this body. In the meeting of the council of ministers, the President makes appointment of civil and military officers of the state, state councillors, the Grand Chancellor of the Legion of Honour, Ambassadors and Envoys, extra ordinary Master Councillors of the government in the Overseas Territories and the like.

As a Head of the State, the President has powers to accredit ambassadors to foreign countries and to receive foreign ambassadors. As commander of the armed forces, he presides over the high councils and is the commander of national defence.

Second, the President has important legislative powers. He promulgates the law within 15 days following the transmission to the government of the finally adopted law; before the expiration of the time limit he may ask Parliament for reconsideration of the law or its certain parts and his recommendation cannot be refused. He may submit any' bill to a referendum. He can dissolve the National Assembly after holding consultations with the Prime Minister, the Presidents of both the Houses of the Parliament and President of State Council. The

Check Your Progress

3. Explain the election method of President of France.
4. Describe the Powers of French President.

Constitution empowers the President to send messages to the House of Parliament. He can call the Parliament for special session to hear his messages. He can seek the opinion of the Constitutional validity of organic laws passed by the Parliament. He has no veto power like the American President. But he has a suspensive veto in the sense that he may ask the Parliament for the reconsideration of a bill as a whole or in part and his request cannot be refused.

Last, the President has emergency powers, apart from the executive and legislative powers. Article 16 of the Constitution lays down that whenever the nation faces any dangers, whether it is internal crisis or an external threat, the President of the Republic shall take the measures to protect the nation. He can take such measures after consulting the Premier, the President of the two Houses of the Parliament and the State Council. He shall inform the nation of these measures in a message. The National Assembly may not be dissolved during the exercise of emergency powers by the President. This provision places sweeping powers in the hands of the President by empowering him to take whatever steps he likes.

An enumeration of the functions of the President confirms the view that he is not at all a nominal executive like the English monarch. He is the "master" of the national executive which has taken the Parliament under its subservience. Herman Finer points out "By these powers the executive has been immensely strengthened". Dorothy Pickles holds that the President "regards both the Government and the Parliament, as being, in their different ways, mere events of the President. In fields which he considers vital the President rules as well as reigns".

FRENCH GOVERNMENT

The Government of France under the Fifth Republic, in a wider sense, means the President, his Prime Minister and the Ministers. In the present French constitutional system the executive is more powerful than the Parliament, while the President is the master of all. The President is the head of the state, the Prime Minister and his ministers are subordinate to him and the Parliament is more or less like a deliberative forum. This arrangement has been made with a definite purpose. It is a fact that the chief objective of the architects of the present constitution was to remove the serious flaw of the previous constitution which had made the National Assembly strong enough to try to govern and to

legislate as well as to supervise and thwart the executive. A workable solution to this problem was discovered by the framers in strengthening the executive at the expense of the legislature. True to say that the Founding Fathers of the 1958 Constitution were anxious to prevent the Assembly from harassing the Government in the rough way it did in the Third and Fourth Republics. They decided, on the one hand, to give the deputies the possibility of pursuing Government's actions by providing more time for questions, but on the other hand, to make it impossible for the deputies to exploit the traditional means for overthrowing Government by interpolation.

The Constitution makes an academic distinction between the President and the Government (ministers under the Prime Minister) by adding that while the business of the former is to ensure the guardianship of the constitution, the role of the government is to given. (Blondel and Godfrey) while the President is elected by the people for a 'safe' term of 5 years, the Prime Minister is appointed by the head of the state for the time he enjoys his pleasures as well as the confidence of the National Assembly. The old system of investiture of the Prime Minister by the National Assembly after his designation by the President has been done away with. Now the President nominates his Prime Minister. It is hardly necessary to point out that the President has much greater amount of freedom in the choice of the Prime Minister than the British monarch for no other reason than the existence of a number of political groups in the Assembly, none of them commanding absolute majority.

PRESIDENT

The ministers are appointed by the President on the recommendation of the Prime Minister. It appears here that the French system pertains to the maxim of a parliamentary government as found in Britain. However, the real position is quite different. Under the existing even though the decree showing the appointment of ministers has to be countersigned by the Prime Minister. The provision of direct election of the President afford the most compelling reason for the real executive to induct some of his "favourites" into the Government and the strong leadership of De Gaulle has already confirmed the truth of this belief. This incidentally introduces an element of the Presidential system in the so called parliamentary system of France and is in keeping with the principle of separation of powers.

7.7 PRIME MINISTER

The Prime Minister has the right to determine the size of the cabinet though its exercise depends upon his ability to please several coalescent groups by accommodating them with at least one major portfolio. The total number of cabinet ministers has varied around twenty. Apart from the cabinet ministers, there are some 'ministers without portfolio'. They do not hold charge of any independent department in order that they concentrate their attention on general policy. However, it is required that they must invariably be the leading politicians of the country. There are some 'deputy' ministers as well to assist their principals. On some occasions, the post of Deputy Prime Minister has also been created.

7.8 COUNCIL OF MINISTERS

A point of distinction is found between the "council of ministers" and the 'Cabinet' in the present French constitutional system. The Constitution lays down that the President shall preside over the meetings of the Council of Ministers and the Prime Minister can do so only at the behest of the President. But the Prime Minister acts as the presiding officer of the cabinet as a matter of right. It slows that there is a subtle difference between the two. The Council of Ministers is a smaller group consisting of the President, the Prime Minister and all the other ministers of the cabinet; while the cabinet includes the Prime Ministers and the other ministers, whether of cabinet rank, or state ministers, or deputy ministers and it implies that the cabinet is a bigger body than the council of ministers an arrangement quite different from that of Britain and India where the cabinet is smaller than the ministry or the council of ministers.

Another astonishing the feature of the French System is that cabinet is less powerful than the council of ministers. The council of ministers is the group of leading statesmen who discuss major matters of national policy and who decide the issues of seeking vote of confidence or the dissolution of National Assembly. As it meets under the chairmanship of the President, it is inferrable that the President of the Fifth Republic, unlike his predecessors, has a very important role in the administration of the country. It is a queer arrangement that while the President is a partly to the decision of the council of ministers, the Prime Minister is accountable to the National Assembly and in case a vote of censure takes place, it is the later who has to resign. As Neumann says: True, men of different political parties still make up the government. But

the President of the Republic who cannot be removed during his term of office, is now their real leader, and the powers of the executive are generally much increased'.

Even since Gen. De Gaulle had seen the efficient working of cabinet secretariat in England in 1940 he developed a liking for the system. Thus the Government of France has a secretariat to keep it informed about events and affairs and to exercise top managerial vigilance. Besides, the President has the power to keep his own secretariat and to hold meetings in his palace. These agencies further enhance the authority of the President at the expense of the powers of the cabinet for the plain that Presidential secretariat is clearly an instrument without which it would be impossible for the head of the state to retain sources of information independent from those of the Prime Minister and that to influence directly the course of events.

According to the Constitution, the chief function of the government is to determine and direct the policy of the nation, it has at its disposal the administration and the armed forces of the Republic. Although lawmaking is the business of the Parliament, the government may obtain its permission from the Parliament, to issue ordinances regulating matters which normally come within the domain of law. The ordinances are made by the council of ministers in consultation with the Council of State and become null and void if the bill for their ratification is not submitted to Parliament before the date by the enabling Act. The Prime Minister has been given the power to initiate legislation.

Despite his weak position, the Prime Minister holds a key position in the government. On his recommendation other ministers are appointed by the President. It is he who directs of administration and is responsible for national defence. He sees to it that laws made by the Parliament are carried out. Besides, he advises the President in making high civil and military appointments. He can also ask for the convening of a special session of the Parliament for the consideration of some important matter. He can also submit to the consideration of the President some proposals regarding amendment of the Constitution. He may call a joint meeting of the two Houses if there is a disagreement between them to pass a bill after its second reading or when the matter is too urgent to be discussed without loss of time. He is consulted by the President before the decree of dissolution of the National Assembly is promulgated. It indicates

Check Your Progress

5. Describe the position of Prime Minister of France.
6. Why Cabinet is not powerful in France.

that the Prime Minister is the chief spokesman of the government before the Parliament in making general discussion of policy.

7.9 CABINET

The salient feature of the cabinet government is traceable in the arrangement that not the President but the Prime Minister and his ministers are responsible to the National Assembly. This arrangement has four dimensions. First the Prime Minister may go to the National Assembly and put his policy for approval if the matter is adopted by a simple majority of the members present and voting, the government is said to enjoy the confidence of the Parliament. Second, the Prime Minister may put a motion of confidence in his government and get it passed by the National Assembly by simple majority of the members present and voting. Third the Prime Minister may stake his position on the adoption of a bill. If such a bill is presented the fate of the bill shall coincide with the fate of the government.

However, the last and most significant weapon is in the hands of the National Assembly. If atleast 1/10th of members sign a motion censuring the government a debate shall take place after the lapse of 48 hours and in case the motion is adopted by the Assembly by an absolute majority of the House, the government must resign for want of confidence. It is further provided in the Constitution that the same signatories cannot table another motion of censure during the same session in case their first move fails. It however does not apply to the arrangement where the Prime Minister stakes the life of his government with the passage of a bill. When such a step is taken by the Prime Minister, the burden is on the Assembly to outvote the government by having a censure motion signed by atleast 1/10th of its members and get it passed by an absolute majority. In case the censure motion fails, or in case the government wins (in the absence of any such censure motion) by a simple majority, it amounts to a vote of confidence in the government. It shows that the National Assembly may take the initiative of moving a vote of censure against the government and throw it out if the motion is carried through by an absolute majority.

It is striking to note that while simple majority is needed for the survival of the government, absolute majority is required for causing its fall. In case a censure motion is lost, another censure motion may by brought forth by at

least those 1/10 signatories who were not party to the previous motion. It is often for the Prime Minister to pledge his government's responsibility, after deliberations of the cabinet, with a specific bill but the text of the bill shall be considered adopted unless a motion of censure, filed within the next 24 hours is voted and passed by an absolute majority of the House. This is indeed a better arrangement in view of the past political experiments. That the same 1/ 10 signatories cannot put forward another censure motion during the rest of the session is certainly a check on the extremist elements who have indulged in obstructionist practices recklessly. The members of the Assembly have still considerable elbow room to defeat government since there is no restriction on the number of censure motions relating to the issue that has made the government question of confidence. "What the procedure does not put a stop is to the possibility that a government may see its bill defeated while it retains, constitutionally speaking, the confidence of the Assembly". (Pickles)

SUMMARY

The constitutional history of France began in the last decade of the 18th century. Before 1789 France had absolute monarchy. The revolution of 1789 put an end to after the appearance was one of the functions that had been assigned to De Gaulle's Government by the French Parliament. Features of French Constitution has been analysed. The President of V Republic is not a very powerful leader but at the same time he is not weak leader. The writers of the constitution describes President as a strong personality. French President is the leader of the nation as well as true administrator. The Council of Ministers works under the direction of the Prime Minister. The President only selects the Prime Minister. Most of the Features are combination of Parliamentary and Presidential. In comparison with other Presidents, French President is also powerful president. He is not a nominal executive. Parliament and government is in the hands of President. He is not like British monarch. Prime Minister is appointed by the President. Ministers are not members of Parliament. As the French Political system is in between the parliamentary and presidential form of government. French ministry is one of the weakest ministry in the world.

KEY WORDS

Council of five hundred - Bourbo charter - Tailor-made - Untidy constitution - Grand electors – Decrees - Public Expenditure - Corps – Commune - The Senate - Lobbying

ANSWER TO CHECK YOUR PROGRESS

For Question No 1	Refer Section 7.2
For Question No 2	Refer Section 7.3
For Question No 3	Refer Section 7.6
For Question No 4	Refer Section 7.6
For Question No 5	Refer Section 7.8
For Question No 6	Refer Section 7.8

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MODEL QUESTIONS

1. Bring out the general features of French constitution.
2. Describe the position, powers and functions of French President.
3. Explain the position of Prime Minister in the French Government.

UNIT - 8

GOVERNMENT OF FRANCE – LEGISLATURE – JUDICIARY – LOCAL GOVERNMENT – CIVIL SERVICE

INTRODUCTION

Till the emergence of V Republic of France, there was the confusion about the Uni-Cameral or bi-cameral legislature. But now it is a bi-cameral legislature. This unit will discuss the position and powers of the two chambers. Roman Law is the guide for French Law. This unit traces the origin of Judicial system. There was no system of common law upto the French Revolution of 1789. There was slow growth of Judiciary. French law is a codified one. Its organization and functions are anlaysed. In France there is a dual system in Courts. This unit will discuss the features of Administrative Law. In France multi-party system existed. The features of multi- parties system are explained. Local Government in France are having the features of centralization and uniformity. The Constitution of V Republic gives a brief reference to local bodies. In this we will analyze the units of local bodies. Historically France is famous for centralization of power. Authority was in the hands of kings. So centralized administration grew in France. France was praised for its officialdom. For filling up the vacancies, the system of sale of office was followed. The merits and demerits of this type of recruitment and present role of civil service is analyzed in the unit.

OBJECTIVES

1. To know about the bi-cameral legislature in France.
2. To know about the position of second chamber, the senate.
3. To know the evolution and growth of Judiciary.
4. To understand the French system of Administrative Law.
5. To know about the system of local government as well as the structure of local governments.

6. To understand the role of multi-party system in France political parties.

7. To understand the meritorious functioning of civil service

STRUCTURE

8.1 LEGISLATURES OF THE III, IV AND V REPUBLIC

During the three-quarters of a century after the Revolution France had a series of Constitutions, some of which provided for a single-chamber legislature and some for two chambers. "There was no fixed tradition", as Munro observed," but in general, the monarchists preferred the bicameral system, while the republicans felt that one chamber was enough". Hence, the Third Republic began its carrier with a single chamber legislature called the National Assembly. But the National Assembly was not merely a legislative body, it was also a Constituent Assembly. The National Assembly was sharply divided on whether the new Constitution should provide for one legislative chamber or for two.

The anti-republicans, the monarchists, the imperialists, and other conservatives who formed an influential majority in the Assembly, were by no means reconciled to the republican form of government. In order to check the turbulence of democracy they desired to set up a conservative senate with effective powers. They ultimately triumphed and the National Assembly agreed to provide for a bicameral legislative body in the Constitution of the Third Republic.

THIRD REPUBLIC

The Constitution of the Third Republic established a Parliamentary government with a bicameral legislature consisting of a Senate and a Chamber of Deputies. The Senate consisted of 314 members. Of these, 239 were elected and the remaining 75 were elected for life by the two chambers. The Constitution of 1875 was amended in 1884. After that, on the death of a life member the vacancy was filled by election in the ordinary way. The elected members of Senate were not directly elected by the people but by an electoral college. The members of the electoral college were elected by universal suffrage. In short, the whole nation directly elected the Senators. The Senate was a continuous body. It was elected for nine years; one third of it being renewed every three years.

The senators were generally professional men and possessed great experience. Almost all the political parties of the chamber were represented in the Senate. Being smaller in size, it was more deliberative and examined proposals in a better way than the lower House. In the legislative field, the Senate had generally co-equal powers with the chamber, though money bills originated in the latter. The Senate could amend financial bills and reduce taxation but not increase it.

The Senate exercised some special powers. Its previous consent was necessary for the dissolution of the chambers. The Senate also acted as a Supreme Court of Justice to try cases of impeachment sent by the Chamber of Deputies.

The Chamber of Deputies was the lower House. It had become much more powerful than the Senate. The 612 deputies were elected for a period of

four years. For the purpose of election, there was universal suffrage, all citizens of atleast 21 years of age being voters. Any elector of atleast 25 years of age whether poor or rich, was eligible for election to the chamber. Members of families who had ever ruled in France were not permitted to seek election.

The Speaker of the chamber was a party-man. He did not usually intervene in debates. He was a very powerful figure in politics and had sometimes been called upon to form a ministry. The speakership had often proved to be a stepping stone to Presidentship of the Republic.

The Chamber of Deputies and the Senate met in a joint session to form the National Assembly in order to undertake revision of the Constitution. They also united to form the electoral college for electing the President of the Republic.

In case of a conflict between the Chamber and the Senate a conference was held between two commissions, one appointed by each House debated together, but voted separately. If an agreement was not reached by this method the measure failed.

FOURTH REPUBLIC

The legislative power was exercised by the Parliament composed of the National Assembly and the Council of the Republic. The National Assembly, the popular chamber, was elected by universal adult suffrage while the Council of the Republic, the upper chamber was elected by indirect suffrage through units composed of Communes and Departments. The National Assembly was elected by the people according to the law passed on 5th October, 1964, which laid down that candidates would be elected-front party lists at a single ballot with proportional representation. The total number of seats was fixed at 627.

Both the chambers held sessions simultaneously. The sessions of the chambers were public. But any chamber could convene a secret session whenever it was necessary. The two chambers, meeting at a joint session elected the President of Republic.

FIFTH REPUBLIC

Parliament of the Fifth Republic is, as in the past, bicameral consisting of the National Assembly and the Senate. The upper House the Senate, has

regained its title, which it had lost in the 1946 Constitution, but not all the powers which-it had under the Third Republic. The lower House, the National Assembly, has kept its name which the Constitution of 1946 had given to it.

The Senate under the Constitution of 1958 is directly elected for a term of nine years. One-third of the Senators retire every three years. Except for age, which is 35 years for the Senators their qualifications are the same as for candidates seeking election to the National Assembly. The National Assembly is a representative chamber elected for a term of five years by universal suffrage.

The two chambers have equal powers, except that the budget originates in the National Assembly. The Senate cannot introduce a vote of censure. The cabinet is responsible only to the National Assembly. When disagreement between the two Houses regarding a bill persists, even after an attempt at reconciliation made by a joint committee, the government could ask the National Assembly to give its final decision. The number of Senators is 283. The National Assembly has 490 members.

Members of Parliament enjoy certain privileges. Criminal and civil proceedings cannot be started against a member of Parliament for what he says or does in the Houses in exercise of his duties. While Parliament is sitting, proceedings may not be taken against a member of Parliament.

The Constitution also prescribes certain obligations of the members of Parliament. Certain occupations are incompatible with membership of Parliament. Article 27 prohibits mandatory instructions to members of Parliament. The same Article also prohibits members from voting by proxy. The voting right of members of Parliament is personal. Under Fourth Republic absenteeism was a regular feature and proxy-voting used to be a general feature. The Constitution of the Fifth Republic has attempted to change all this. A member of Parliament may now delegate his vote for five reasons, duly notified in writing in advance. They are: absence on ground of illness; accident or family circumstances; absence on a government mission or on military service; absence from France on the occasion of a special session of Parliament or due to representation of the Senate or Assembly at a meeting of an international Assembly. No single member can cast more than one proxy vote. The Constitution also requires that members must vote regularly.

The salary of the members is now divided into two parts the basic salary, and an "attendance bonus". The Bonus is received fully only if the member's attendance is satisfactory.

Parliament now meets on fixed dates and for a fixed duration. Article 29, as amended in December 1963, provides for two regular sessions, the first beginning from October 2 and it lasts for 80 days. The second session opens on April 3 and its duration is not to exceed ninety days. Parliament therefore, now sits for a maximum of less than six months in a year whereas in the Fourth Republic it sat for a minimum of seven months. The first session of Parliament deals mainly with the budget, and the second with legislative programmes. Extraordinary sessions may be held at the request of the President of the Republic, or of the Prime Minister or of a majority of members of the National Assembly, for a specific agenda. If the extraordinary session is held at the request of a majority of members of the Assembly, the session must be closed as soon as specific agenda has been completed and in any case, after a period not exceeding twelve days. At the request of $1/10^{th}$ members of the National Assembly a secret session of the National Assembly can be convened. In addition, Parliament meets on two occasions after an election and during an emergency.

Each House, elects its bureau at the beginning of the October session, consisting of the President, Vice-Presidents (six for the Assembly and four for the Senate), Secretaries (twelve for the Assembly and eight for the Senate). The secretaries supervise the production of official records and check the votes and the questeurs are responsible for administrative and financial arrangements. The bureau, as a collective body, organizes and supervises the different services in the Assembly; if required, it advises and supervises the President of the Assembly on disciplinary matters and the admissibility of bills or resolutions.

The Presiding officer (President) of each House is elected at the first meeting of the session. This meeting is presided over by the eldest member of the House. The President of the National Assembly is now elected for the duration of the House (formerly elected annually). The President of the Senate is, however, elected after each partial re-election of the House after every three years. The President of the Senate performs the functions of the President of the Republic if the latter is incapacitated. The 1958 Constitution vests certain

Check Your Progress

1. Explain the Comparative of Legislature in V Republic.

specific powers to both the Presidents. The Presidents of the National Assembly and the Senate must be consulted by the President of the Republic as to the existence of an emergency as defined in Article 16. A private member's bill, resolution or amendment which the President of the House holds to be constitutional, but the government challenges it as unconstitutional must be either submitted by him to the Constitutional Council or ruled out of order. Apart from these, the Presidents exercise the normal functions of a Chairman. Under the Standing Orders of the Assembly and the Senate the Presidents of both the Houses enjoy somewhat more discretion than their predecessors under the Third and Fourth republics, particularly in calling members to order and the calling for the closure of the debates. The Presidents of the Assembly and the Senate do not possess the unchallenged authority of the Speaker of the British House of Commons. It is due to the fact that they remain active members of their parties.

8.2 LEGISLATIVE PROCEDURE

Ordinary bills may be introduced in either House. Finance bills may be introduced first in the National Assembly. After introduction, bills are submitted either to one of the six regular commissions, or on the request of either Government or Assembly, to an adhoc commission. Membership of the adhoc commission may not exceed thirty. Debate on a government bill begins with a ministerial declaration, followed by the commissioner's report.

The legislative initiative is exercised concurrently by the Prime Minister and by the members of the Parliament. Bills and amendments proposed by private members of the Parliament are not admissible when their adoption would result either in a reduction in public revenues or the creation or increase of public expenditure. In the event of disagreement between the government and the President of the House concerned, the Constitutional Council gives a ruling at the request of either party, within a week.

The Assembly, first debates the general principles of the bill as presented by the Government as the Commission's spokesman. After the debate, it votes on the bill Article by Article, finally voting on the text as a whole as amended. This completes the first reading of the bill. The bill then goes to the Senate where it goes through a similar process. If both Houses agree on the same text, the bill is sent to the Presdient of the Republic for promulgation. If it is

promulgated by the President of the Republic it will be published in the Journal Official and will become law. The President has no veto power. But the President may ask Parliament to reconsider the bill within fifteen days of its presentation to him. Parliament must comply with this request. If the two Houses disagree on a bill and if the Prime Minister asks the National Assembly to decide, the Assembly can override the Senate by a majority of its total membership.

Article 34 states, "All laws shall be passed by Parliament". The Article proceeds to elaborate what laws are by stating that "laws determine the rules" relating to a number of listed matters; civil rights; the fundamental guarantees of public liberties; the obligations of the citizens for purposes of national inheritance; the definition of crimes and penalties attached to them; criminal procedure, the organization of the judiciary; taxation; the electoral system; the fundamental guarantees of civil servants and of members of armed forces; the creation of categories of public corporations, the nationalisation of private property. The Article then adds that "Law shall determine the fundamental principles" relating to certain other matters - the organization of national defence and of local government; education; social security; the law of property and commercial law, labour and trade union laws; finally, the Article states that its provisions "may be elaborated and completed by an Organic Law". Before 1958, there were only two types of laws-ordinary laws and the Constitution. In order to strengthen the government in relation to Parliament, and to bring meaning to the question of delegation of legislative power to the government, the Constitution of 1958 introduced two new types of documents, namely "Organic laws" and Ordinances.

The Constitution lays down procedures for using Organic laws. An Organic law is law passed by an absolute majority of members of both Houses of Parliament. Organic laws may be amended. They are promulgated only when the Constitutional Council has declared that they are in conformity with the Constitution. Organic laws affecting the Senate must be voted in the same terms by both the Houses.

The following special procedure for voting Finance Bills is designed to prevent the Assembly from using delaying tactics. Before 1958, French Parliaments were notorious for their delaying action in respect to the budget. The Constitution of 1958 prescribes a limit of forty days within which the

National Assembly must complete the first reading of the Finance Bill. If it does not vote, the government sends the bill to the Senate to be read within two weeks. If the bill has not been voted after 70 days, the government may promulgate the Finance Bill by ordinances. If the government has not submitted the finance bill in time to be promulgated before the beginning of the finance year, it may ask Parliament to authorize taxation by decree and to authorize expenditure in respect of any estimates previously accepted by the Assembly. If the two Houses disagree on a Finance Bill the procedure is the same as that governing disagreements on ordinary bills.

METHODS OF RESOLVING LEGISLATIVE DEADLOCK

According to the 1958 Constitution, the National Assembly cannot override the Senate. If the government intervenes on the side of the Assembly, this is possible. If the government does not intervene, a bill on which there is disagreement between the two Houses, can go back and forth between the two Houses indefinitely. Second and further readings of a bill deal only with the Article on which there is disagreement. The Constitution does not contain any provision to end persistent disagreement.

When there is disagreement between the two Houses regarding a bill, governmental interference could be either of two kinds: first, if the bill has been read twice in each House, government may require the setting up of a commission consisting of equal number of members from each House of Parliament. If the commission reaches agreement the bill will be submitted by the government to both Houses for voting or if the commission does not agree or if the bill as agreed is rejected by either House, the two Houses may make further effort to agree, or drop the bill, or shelve it; second, the government may first request each House to give the bill a further reading. If disagreement persists the National Assembly may be asked to vote on the bill with or without any amendment proposed by the Senate. If it is a non-organic bill the Assembly requires only an ordinary majority vote to override. If the government is not interested in a bill, the Senate could effectively block legislation proposed by the Assembly.

8.3 COMMITTEE SYSTEM

Until 1958, the Legislative Committees in France were very powerful and were often in conflict with the government. The situation has been altered

Check Your Progress

2. Discuss the process of Law making in France.

by the Constitution of 1958. Article 43 limits to six the number of permanent committees in each House. They formerly numbered 19 each having 44 members. The purpose sought in reducing the number of committees is two-fold; to reduce the authority of the committees and to prevent the time wasting process.

The composition of the six regular committees varies from 60 to 120 members, nominated to represent proportionally to the political parties. Only organised groups with thirty members or more are now represented on the committees. Isolated members can become members of committees only if elected by the whole House to any vacancies remaining after the seats have been allotted to group members.

Committees receive the bills, examine them, hear the ministers and suggest changes. But the government has the last word on bringing the bills on the floor of the House and an accepting or rejecting the amendment made. The procedure is that debates on a government bill begins with a ministerial declaration and then the committee's report is presented.

8.4 POSITITON OF THE SENATE

Both the Houses possess identical powers, except that the Finance Bill has its first reading in the National Assembly. The 1958 Constitution does not permit the Assembly to override the Senate. The Senate has been given veto over legislation if the government so desires.

The Senate does not control the executive. The government is responsible to National Assembly alone. The Senate possesses co-equal legislative powers with National Assembly and exercises effective right of veto over any change in its status. The President of the Senate has the right to replace the President of the Republic if the latter is incapacitated. The replacement is valid until the selection of a new President. The President of France consults with the President of the Senate before applying Article 16 (emergency) and before deciding the desirability of a dissolution. In certain circumstances the President of the Senate may submit bills to the Constitutional Council. Like the President of the National Assembly he has the right to nominate three members to the Constitutional Council. The Senate has the right to have equal representation with the National Assembly in the High Court of Justice. The National Assembly needs the

Check Your Progress

3. Briefly explain the Committee System of France.

concurrence of the Senate before requesting a referendum. The Senate has the right to receive presidential messages. Except for the foregoing provisions the Senate remains a subordinate legislative chamber.

8.5 JUDICIARY

French law is built solidly upon Roman law. During the Middle Ages the field was largely taken by the customary law. France became the classic land of feudalism. The dukes and counts were too powerful in their own dominions to be controlled by their king. Hence, there grew up in every local area its own system of customary law. These, in due course of time, were put into written form and administered by the local counts. There was no system of common law upto the Revolution of 1789. However, justice was administered by edicts, decrees and ordinances issued by the king. The weakness of the system became clear to the leaders of the French Revolution. They abolished the old system of the jurisprudence and enacted general statutes instead. Old and new laws were consolidated and codified. In 1791 and 1795 the first penal code and code of criminal procedure were enacted. When Napoleon Bonaparte came of power he took up the important task of codifying French laws. The civil code which was published in 1804 was the first of a series followed in 1807 by a code of civil procedure. Commercial procedure, the penal code, and other such codes were enacted subsequently; in all of them, the predominant influence of Roman Law was paramount. These codes have been revised and amended, but the fundamentals remain unchanged.

The civil code was reissued in 1904. In 1959 came a new code of criminal procedure. The Law of marriage settlement was reformed in 1951 and in 1959. Numerous revisions have been made in the commercial code also. The revised, supplemented and enlarged Napoleonic codes from the law of France to -day.

A notable feature of French law is its codified form. It is a written law. France has a uniform system of law throughout the country. There is unity in it and the law, as embodied in the code is dear and easily available, precision of language and parity of expression are other notable features of French law. Judges in France decide cases on the basis of the codes and legislative enactments. Case law is not given much importance in France. In France judges decide every case independently on its merits in conformity with the statutory law and not in conformity with the precedents. Precedents are cited in French

courts. But no great reliance upon them. In France, distinction is made between the ordinary law and administrative law. Consequently there are two separate systems of courts; ordinary tribunals and administrative tribunals. The French judiciary is part of the civil service.

8.6 ORGANIZATION OF THE JUDICIARY

Judiciary in France is composed of two distinct sets of courts. One set is composed of administrative courts. These courts deal with cases affecting administrative officials and cases in which the state is a party. Another set of courts is composed of the regular or ordinary courts which deal with criminal and civil cases. In 1958 the fifth Republic reorganised the system of ordinary courts.

Ordinary Courts: The courts are organished hierarchically. Before 1958 the lowest courts were of the justices of peace over them and tried civil cases. There was one such court in each commune or a group of communes - 3,000 such courts in all. A justice of peace was nominated by the President of the Republic on the advice of the Minister of Justice. He possessed the first law certificate. He heard and tried cases involving petty offences. In cases involving atleast 300 francs, or crimes entailing penalty of atleast 5 francs, appeals could be preferred to the Court of Arrondissement. The reforms in 1958 reduces drastically the number of courts. Since the reforms, the 3000 or so justices of the peace were abolished. The gradual urbanisation of the country made most of these courts superfluous. Thus the reform decided that the lowest court would be tribunal instance. There are some 657 such courts in France [an average of four such courts in each department]. These courts deal mainly with the smaller cases which justices of the peace used to deal with in the past.

For most important cases, plaintiffs go to the tribunal de grande instance. There are 178 such tribunals. These courts hear appeals, especially from the judgements of some of the specialised courts. The most important are the tribunals de commerce, which deal with commercial disputes and the counsels de prud 'lemmis which deal with disputes between employees and employers over the implementation of labour contracts. While the judges on these specialised courts are elected by and from among businessmen and workers. Tribunaux deinstance and tribunax de grande instance are entirely staffed by members of the career judiciary. Tribunal de instance has one judge, who in

addition to his more formal powers also acts much as a justice of the peace did in the past-settling domestic and other minor disputes by conciliation. The tribuqaj de grade instance have three or more judges and neither court has a jury. The specialised courts are the only civil courts in which lay members are to decide on cases.

Simple criminal cases are dealt in the police courts [tribunax de police], which function in almost all localities of importance [in fact in the same way as the tribunaux' de instance]. More serious offences are brought before the tribunaux correctionnels where judges [the same as those of the tribunaux de grade instance] each of which consists of three judges and nine jurors. Eight votes of the twelve are required for conviction, and French judges normally bring their influence to bear on the jurors.

Appeal on a matter of fact is generally allowed in civil cases[unless the matter is trivial] but not in criminal cases. Appeal in interpretation of the law is always allowed. Appeal of both types normally go to a court of appeal of which there are thirty one throughout France.

The highest court in France is the court of cessation. It is called cessatoin because it may 'break' the law of the lowest court but not the judgement. Cases are brought from any court for the proper interpretation of law. It would not give a final judgement. The case is sent back to another court at the level it has been tried before. If a second appeal is made the court of cessation awards a mandatory judgement on the point of law involved. The judgement must be accepted. The court of cessation has eighty three judges. The judges are divided into five sections-two civil, one criminal, one social and one commercial. When a case comes before the court of cessation, on second appeal, all the judges compose the bench.

There are number of special courts which are linked to the regular court structure. The most important special courts is the permanent court of state security. This court has original jurisdiction in cases of subversion. Appeals from this court go only to the court of cessation. Other special courts are the industrial Councils, the Commercial Tribunals, Juvenile Courts. Social Security Commissions and Courts of Farm Leases.

With regard to organisation of ordinary courts, there are certain important general features. The first is the unity of civil and criminal justice. The same judges sit in both the courts. Similarly, the public prosecutors, known as parquet are occupied with civil as well as criminal cases, [though attached to the civil courts, There is, however, a separation between the two in the higher courts and they are divided into civil and criminal sections.

There is in France no system of circuit courts except in the case of Assize courts. The courts are stationary and litigants go to the judges rather than judges going to the litigants. The English and American system of circuit judges has never been adopted in France.

French courts are collegial. No French court is allowed to give judgement with only one judge making the court, No judgement is valid unless concurred in by at least three of the judges constituting the bench. The principle is insisted to avoid prejudice.

Appointment of judges: During the third Republic judges were appointed by the minister of justice. It interferred with the independence of judges. Often politically unpopular judges could be denied promotion. So this method of appointment was severely criticised. The constitution of the Fourth Republic attempted the President of the Republic as Chairman and the minister of justice. It evaluated the qualification and merits of the justice-candidates and recommended a panel of names to the President of the Republic and selection was made therefrom. The constitution of the Fifth Republic retains the Higher Council, but with restricted functions and somewhat different methods of appointment. It consists of the President of the Republic [chairman], the minister of justice [ex-officio chairman] and nine members appointed by the President of the Republic. The council nominates judges to the higher judicial posts and rules on matters involving the judiciary. The magistrature, in which there are clearly defined ranks and schedules of promotions, is open to law graduates successful in a competition examination. The judiciary, at the lower level, is a career service.

INDEPENDENCE OF JUDICIARY

Article 64 of the 1958 Constitution specifies that judges shall be irremovable. The Constitution of the fourth Republic had made a similar

provision. According to the Constitution of 1958 a judge can be removed from office on charges of gross misconduct only and that too on the recommendation of the Higher Council of Judiciary have been entrusted with the constitutional duty of acting as disciplinary council for the judges.

ADMINISTRATIVE COURTS

There is a dual system of law courts in France. There are the ordinary courts for trying cases in which only private citizens are involved. There are different administrative courts for typing offences committed by government officers in their official capacity. This is due to the fact that Franee has developed Administrative Law [droit administraif] and has on Rule of Law.

Administrative Law has existed in France since very old days. Napoleon had adopted it to suit the conditions then prevailing. He introduced two principles, viz, the state officials have certain privileges, rights and prerogatives as against the private citizens and the executive should be independent of the judiciary. As a result of these principles, four features of the Administrative Law came into force.

Firstly, the relations of the state officers towards private citizens were guided by rules entirely different from those governing the relations of private citizens to one another. Secondly disputes between state officers and private citizens were to be disposed of not by the ordinary courts, but by special courts established for the purpose. Thirdly, the question whether a particular case was to be governed by the Administrative Law or ordinary law was decided by the head of the state, in practice by the council of state on his behalf. Fourthly, a state official was protected from the supervision of ordinary courts on the ground that a particular act was done in the discharge of his duty as a representative of the state. After the Nepoleonic period, minor changes were introduced in the system of Administrative Law.

Droit Administratif or Administrative Law, as opposed to the Rule of Law, is made up of a body of rules divided by the French executive for regulating the relations of the state towards its citizens. Administrative Law deals with the position and liability of the state officers, the rights and duties of the French citizens in regard to their relation with the state officials as representing the state and the procedure that is followed in enforcing these rights and duties

(Prof. Dicey). State officials and municipalities as corporate bodies are responsible for their actions and consequently can be used in the administrative courts and pay damages for any prejudice to life and property caused by defective actions. Defective action means the action of the officials which is the result of bad judgement or violation of the prescribed forms of law or misuse of power. Dicey defines 'administrative law as' that body of rules which regulate the relation of administration or the administrative authority towards private citizens'. The administrative law is not embodied in a code like the civil law. Some of the rules have been established by the decision of the Council of State, Administrative law, thus, somewhat resembles the Common Law of England. The French system of Administrative Law covers a wide range. It deals with the rules relating to the validity of the administrative decrees, the methods of granting redress when public officials exceed the authority vested in them by law, the awarding of damages to private individuals for injuries which result from faults of the public service, the distinction between officials and personal acts on the part of public officers and many other allied matters.

It must be noted that, the immunity of public officials from the jurisdiction of the ordinary courts does not extend to anything done by them in a personal or non-official capacity. It does not even extend to acts performed in an official capacity, if the injury results from the personal fault or personal negligence of the officer concerned. The state is stable and will pay where the official acts in good faith for the public. It he does something in office which is not truly in pursuance of its purpose, the official himself is responsible and not the state. He will be sued personally before the ordinary courts for damages and it is the Tribunal des conflict [the court of conflicts] which decides whether it is personal fault or not.

The Administrative Courts are true courts, organised hierarchically, some of which deal with general administrative matters, while others are concerned with particular problems. At a lower level the ninety odd conseils de prefecture of Napoleon were reduced to twenty three in 1926 and renamed tribunaux administratif in 1953. All these 23 tribunals are full-fledged courts of first instance in administrative cases. In general these tribunals hear complaints

Check Your Progress

4. What is Rule of Law.
5. What is Administrative Law?

made by the individuals against the actions of administrative officials. Each Administrative Tribunal consists of a President and four members appointed by the Minister of the interior from among persons who hold or had held public administrative positions.

Counseil D'etat: At the upper level, sitting as an appeal court in many cases, but directly competent for the more important problems is the famous Counseil d' etat [The Council of State]. It is composed of 150 members who are almost entirely recruited through the School of Administration. The council is divided into sections, advisory section and a judicial section. The judicial section is in turn divided into a number of chambers in which normally five councillors decide cases on the report of more junior members. More important cases can be decided by as many as ten or fifteen councillors.

The Council of state is an impressive body enjoying the public esteem and confidence. Its litigation section devotes the whole of its time hearing appeals that come before it from the regional courts, hearing also the large number of cases that come to it as a court of first instance, annulling decrees, even of the people .Access to the court is easy, convenient and cheap. Appeals may be lodged in the council through mail. Sometimes, appeals may be written in a prescribed officials form and be produced along with the necessary documents. Even the small fee that the appellant pays is refunded to him if a decision is given in his favour.

The French system of Administrative Law and Administrative Courts have been the subject of severe criticism in countries which have their legal system based on Anglo-Saxon law. The critics maintain that justice cannot be expected from the administrative courts when the administrative branch of the government is made the sole judge of its own actions. When administration is both the offender and the judge of the offence, there can be neither impartiality in the decisions nor the authorities rendering the decisions can act independently. This is a pure and simple encroachment on the essential liberties and fundamental rights of the people. But in the light of French experience it is not true to say that Administrative Law and the Administrative Courts jeopardise the rights and liberties of the people. On the contrary, Frenchmen consider it the cornor-stone of their liberties. There is not justification for suspecting the Administrative Court of partiality in favour of the officials. The Council of

State as the highest Aadministrative Tribunal, has established admirable traditions of impartiality. Administrative Courts consist of experts on the administrative side who understand the technicaties involved. There is always greater possibility of right judgement when decision is rendered by experts. Moreover, citizens get better redress for the injuries sustained because litigation in the Administrative Courts is cheap and it is executed rapidly. The procedure is simple and there exists decentralised administrative jurisdiction in the 26 regional courts which are courts of first instance.

In addition to the general Administrative Tribunals, there are some forty different types of specialised Administrative Courts. The most important of these is the Court of Accounts. This is the supreme audit agency. The Council of State exercises supervision over all specialised Administrative Courts. The Council of State can only quash a verdict for illegality or procedure error and then the case back to another body on the original level for retrial.

Administrative Courts give public officials sufficient power to carry out their designs. It gives them greater assurance for independence in making decisions and enforcing laws by subsuting state for personalibility. At first sight it might appear that citizens in France have no judicial recourse against the public according to the law made by the Administrative Tribunals. But such is not actually the case. Though it is true that the precepts of Administrative Law are not found in any code and one purely based upon precedents, yet has mainly developed under the influence not of politicians, but of lawyers.

The critics of administrative jurisprudence, notably in England and America, have in the recent years grown more sympathetic towards Administrative Courts as Courts of Arbitration. Wherever there is administration there is Administrative Law and both England and America have themselves developed agencies having all the essential characteristics of Administrative Courts.

8.7 PARTY SYSTEM

A detailed study of party politics in the political system of France has a significance of its own. The French party system is unique in the western world, and probably in the world as well. France is well known for having a multiplicity

of political parties. The political parties of France are loosely organised and undisciplined. So, the reunion and re-arrangements had become a normal feature of the statisological politics in France. There is a lot of diversity in the organisation and attitudes of France's political parties. Party organisation varies from the disciplined parties on the left, to the constantly changing right wing parties. Most of the parties have no ideological base. There is no party of France that may be treated like the Conservative or Labour party of the U.K. in respect of its political commitment. Likewise, there is no party may be identified with the Republican or Democratic party of the U.S.A. that are like vote mobilisation machines. The geographical composition of the country is an important factor for the growth of too many parties in France. The northern half is more right-wing than the southern half; the west and east are particularly Christian - traditional and conservative; the centre and south west are both progressive and dechristianised. Owing to these reasons, the political climate in France always remains at fever pitch. So, the political parties in France is weak in the organisation and structure lacking in definite commitments and followed by heterogeneous and rather frickle clientele. The multiplicity of parties in France may be explained by (1) the lack of political continuity; (2) the French temperament (3) proportional representation, and (4) lack of party discipline. Let us discuss the major political parties in France.

UNION OF NEW REPUBLIC

Gaullism is the most important movement of France since 1946. Under the leadership of De Gaulle it started its political carrier as the Rally of French Republic (RPF). However, in 1958, after the De Gaulle came to power, the old RPF has been changed into the Union of New Republic. Gaullism is the basic principle of the party. Gaullism means many things to many men, from a full fledged Parliamentary system to a strong presidency. It is another name for a strong government under a powerful leader. This is an anti-communist party. In certain respects Gaullism is identified with fascism in view of the fact that the RPF was inspired by the towering personality of a single leader, De Gaulle, and that it "combined demands for radical social changes with intense nationalism". It was anti-parliamentary and anti-trade union. The surprising part of the study is that after the establishment of the Fifth Republic, UNR became a basically different organisation in the sense that it was formed to support De Gaulle in power, not to win power for him; it was formed by the

supporters of De Gaulle. Finally, it should also be taken note of that the trend of left Gaullism developed and that too with the private blessings of the great leader. A progressive section of UNR took a different line. The victory of Giscard de E'staing as President in the election of 1974 was a clear indication of this trend. They thought that Gaullism would not save the country from relapsing into the morass of political instability. The new trend has paved a way for the growth of new leaders more quickly than the setting up of factions inside the party and the organisation of joint groups with other parties. However such leaders come smoothly without creating difficult succession problems. The UNR "can hope to survive and new style by imposed upon the right and the centre-right of French politics and, indeed, indirectly on the left as well".

COMMUNIST PARTY

It is the most important political party of France which gives a picture of a dictatorial Marxist party inside a democracy. Though it was formed in 1920, it has fixed its strong foothold in the French political system only after 1950. The party is still Bolshevik in spirit, principles and organisation. It strongly denounces France's servitude to the Wall Street for Marshall Aid, membership of the NATO and other military pacts. In other words, it is anti-American. It has opposed the official policy of supporting German rearmament or aggressions in the various parts of Asia and Africa. Its ultimate goal is social evolution.

The party has its pyramidical organisation. At the base are occupational cells in the mines, Workshops and factories. Each cell is composed of about three to thirty members. It meets once a week to decide the programmes and working of their units. At the higher level, there are sections and then federations departmental. It consists of delegates from the cells and local executive committees. The party higher up is the biennial National Congress composed of the delegates elected by conferences in each department. A central committee of 60 to 80 members is elected by the Congress. The Politbureau of 14 is the iron hand of the party. The disciplinary power of the party is vigorous and unforgiving.

In May-June 1958 this party called the people to revolt against President CharlesDe Gaulle. But the people paid no attention to its call. Hence, the party has sharply declined in the elections of 1958. Its strength in the national legislature came down from 145 to 15. The National Assembly has refused to

nominate the members of this party on various bodies. It bought a change in this party and this party began to support President De Gaulle, particularly on the issue of Algerian crisis.

SOCIALIST PARTY

It was founded in 1879. It is standing for the principle of responsible democracy and civil rights. Originally, it was an amalgamation of two antagonistic groups, the liberals led by Jean Jaures and syndicalists and Marxists led by Jules Guesde. In 1920 there was a split in the party and most of its members joined the communist party. It is referred to officially by the initials of SFIO meaning section francise de I' international Ouvience or French Section of Second international.

The party is the defender of the .Democratic Republic of France. It stands for the programmes of nationalisation, welfare state and planned economic investment. It has also supported French membership of the NATO.EEC and Schuman Plan. It is an advocate of extended self-government of the colonies, but not total independence. In the elections of 1956, it formed government under the presidentship of Guy Mollet. But, in the elections of 1958 it was defeated. This party enjoys considerable support form the people.

RADICAL PARTY

It was founded in 1901. It is organised around local notables. It had a strong influence under the third Republic, but now it is nothing more than a departmental group. Its members have always been detachable from the main body for the purpose of joining left, right and centre coalitions. It has stood for the return of the third Republic. It is anti-German. However, it is pro-west and thus insists on French membership in military pacts. In 1958 it was sadly split. This party has its nation-wide structure. It has local committees and departmental federations. But their federations are highly independent. It has an annual national congress consisting of elected delegates. Editors of the Radical-owned Newspapers are its ex-officio delegates. The executive committee of 70 members has controlled the party activities as a whole.

In short, a study of French party system presents both a matter of special interest and peculiar difficulties. The electoral reform of 1962 is the reason for the growth of too many parties in French political system. All political parties

like to claim themselves some stand on French tradition. According to Blondel, the analysis of French political parties is a rich subject of study which has not ceased to fascinate the French, but the entry into the study is difficult and can be painful.

8.8 PRESSURE GROUPS IN FRANCE

The role of pressure groups in the politics of France has an importance of its own. France is known for its plural culture and free and open society. It is the standing example for weak multiparty system. Like political parties, the French have numerous pressure groups which have their own characteristics.

The absence of stable political parties paved the way for the rise of numerous pressure groups. It may be due to their plural culture and their intense ideological character. The division may be seen on regional, social, economic, cultural and political lines, most of them relate to the conflict between Left and Right. Moreover, political groups or 'families', as they may be termed, have fragmented into sub groups with differences among them. It is divided into sub-groups eventhough they have a common objective and interests. The veterans, farmers, workers, etc are all spread out among a great number of organisations says, "where the multiplicity of professional and occupational groups is compounded to such an extent by the ideological element. The interest groups are politicised "that is impregnated with political attitudes". Stasiological politics in France try and draw a line of demarcation between political parties and pressure groups, and it is vain. This is the outstanding feature of the French System, where there is no differences between political parties and pressure groups. It is due to the absence of political consensus. The French people lack the tendency of rigid political commitments. They have flexible temperament with the result that no political party can claim its invariable support from a particular section or class of the society. Naturally, it enhances the position of groups at the cost of the parties. Most of the necessarily the one which represents them at best, even politically. Owing to the absence of a strong and disciplined party system the politics of interest groups has a flourishing form in France.

In France, Pressure Groups exist in all walks of life. Like their political parties they have a number of organised groups. In France for each single interest there are many different associations-from organised groups like the National Council of French Employers to quite small ones giving sectiona

representation like National Council of small and medium - sized business and there are some organisations having purely academic character like the Confederation of the Intellectual Workers of France. The General Confederation of-Labour is the most important trade union in France. We may categorise the interest groups in France into five types-business and employers, labour and agrarian, intellectuals and students, and army and veterans.

The business and employers organisations may be the most solidly organised group in France. It includes industrialists, corporation managers, bankers and merchants. The main functions are to establish a liaison between industry and commerce, to improve economic and social conditions of the country, to represent business firms before the public authorities and to provide information for its members. The council speaks on behalf of many powerful interests.

The labourers have their own organised groups. The General Confederation of Labour is the most important one. It includes many industrial unions of craftsmen, steel workers, artisans, etc. The National Confederation Committee, an elected body, is the directive medium of this group. Most of its leaders adopt the tactics of the communist leaders. A militant section of this organisation left it to form the National Confederation of Labour that is said to be influenced with the philosophy of anarchism. The interest of the farmers particularly the richer ones, are represented by the National Federation of Farmers. The socialists and communists have their own organisation. The intellectuals and the veterans have formed their own organisation. The Confederation of the intellectual Workers of France is the most important organisation of the "intellectuals". It includes printers, painters, writers, journalists, teachers and the like. The members of this organisation have a sharp difference on the merits of economic issues and the strategy of action to the adopted for promoting their interests. The students have their own organisation like National Students Union of France that remains concerned with advancement of their own status and well being in the form of scholarships, loans, living quarters, etc. The army officers, non-commissioned officers and graduates of different military schools have their own organisations that largely concentrate on obtaining pensions and other final privileges. The National Union of Veterans and Republican Association of veterans are examples of such organisations.

The role of interest groups in France is quite different from that of the United States and Britain. The pressure groups not only play a very dominant role, but also a very irresponsible role because the sectional interest "tend to take precedence over the national interest". Though the pressure groups are organised solidly, they" are also so divided that they often fail to generate a common strategy and action".

Lobbying is the main tactic of the pressure groups. The 'lobbies', give financial support to the candidates at the time of election, induct their own men into the high ranks of the administration; they will carry away public opinion in their own favour and do a lot of things that bring them close to their American counterparts. Their agents are everywhere in the administration to realise their interest. But the technique of lobbying is mainly used by the business organisations whereas the unions are always talking in terms of Violence'. Agitation and violence are the only means for the labour unions to meet their objectives.

However, the political behaviour of interest groups of France is much different from that of their Anglo-American counterparts. In France, there is no demarcated line between the parties and pressure groups and both interpenetrate each other. The pressure groups easily get their things done because of two reasons; one the governments have been too unstable to be able to say 'no' to any one, and secondly, the governmental powers have been diffused among many agencies like Prime Minister, Parliamentary committees, civil service and so on; since all pressure groups managed to defend themselves and extract concessions from the state, it was impossible for any of them to produce radical changes of policy. The various groups could thus check each other. Because of their political pluralism, the pressure groups have not been able to act in union. In France, the bourgeois interests have been in a position of advantage due "to the practical application of their secret lobbying tactics. There is much of anonimism in the political behaviour of various interest groups that place the stasiological politics of France in a category different from its Anglo-American counterpart.

FRENCH ELECTORAL PROCESS

The French electoral system is based on the ordinance of 13th October 1958; but the Parliament is empowered to make a new law or amend the electoral

law for the country. The present system for elections to the National Assembly is the single member system with two ballots. However it is not used for the election of all deputies of the National Assembly; but also 470 deputies are elected under this system. According to this system a candidate must obtain a minimum of 50% plus one, that is an absolute majority of the votes cast at the first ballot, and a number of votes equal to a quarter to a quarter of the electorate or have the poll at a second ballot held a week later. The qualification for electors are: (i) French citizenship; (ii) age over 24 and (iii) enjoyment of civil and political rights. The candidates must also be French citizens and over 23. They cannot stand in more than one constituency. Candidates are required to deposit 10,000 French which is refunded to them if they secure 5% of polled votes in their ballot. Men and women are eligible to be voters and candidates on equal terms.

An interesting feature of the present system is the requirement that all candidates must nominate a substitute who will replace them if after election, vacancies arise for any reason. The substitute may be regarded as a 'shadow candidate'. This 'shadow' candidate's name is printed on the ballot paper below the name of the main contestant. The senate is still indirectly elected mainly by local councillors. Whereas deputies are elected for 5 year term the senators are elected for 9 years, one-third retiring every 3 years.

Two important points should be mentioned at this stage. First the system of a single member with two ballots is not applicable to all elections in the country and not even to all seats to the national assembly. As such, different methods of direct and indirect election including those of proportional representation, are applied in different elections to national and regional popular bodies. Second, French people are still undecided about the absolute merits of a particular system of elections.

MAJOR FRENCH POLITICAL PARTIES

1. The Socialist Party (PS)

PS (Parti Socialiste - Socialist Party) Social democratic party, reorganized in 1971. Led by for many years by Francois Mitterrand, who served as French president from 1981 to 1995.

2. The Communist Party (PCF)

PCF (Parti Communiste Francais - French Communist Party) Stalinist organization in France, led by Robert Hue. Its daily newspaper is L'Humanite (Humanity).

3. Union for the French Democracy (UDF) (Christian Democratic Party).

4. Union for the Popular Movement (UMP) (Rightist Party)

5. Leftist Radical Party (PRG) (Moderate Leftist Party)

6. National Front (FN) (Far Right Party)

7. Republican National Movement (MNR) (Far Right Party)

8. The Greens

9. Rally for France (RPF) (Rightist Nationalist Party)

10. Worker's Fight (LO) (Trotskist Party)

11. Revolutionary Communist League (LCR) (Trotskist Party)

LCR (Ligue Communiste Revolutionnaire — Revolutionary

French middle class radical group, led by Alain Krivine, affiliated to the Pabloite United Secretariat. Its weekly newspaper is Rouge (Red).

TRADE UNIONS IN FRANCE

1. LO (Lutte Ouvriere - Workers Struggle) Opportunist radical group, formed from fraction of French Trotskyists who opposed founding of Fourth International. Named after its weekly newspaper. Chief spokesperson is Arlette Laguiller.

2. PT (Parti des Travailleurs — Workers Party) Radical organization deeply implanted in the trade union bureaucracy. Formed by a merger of Pierre Lambert's International Communist Party (PCI, formerly OCI) and a group of disgruntled Socialist and Communist Party union officials. Its weekly newspaper is Information Ouvrieres (Workers News).

Check Your Progress

6. Why multi-parties in France?
7. List out the name of Political Parties in France.

3. CGT (Confederation Generate du Traail — General Confederation of Labor) Stalinist — dominated union federation, led by Louis Viannet.

4. CFDT (Confederation Francaise Democratique du Travail —French Democratic Confederation of Labor) Labor federation with origins in Catholic unions, headed by Nicole Notat. Loosely associated with Socialist Party.

5. FO (Force Ouvriere — Workers Power) Reformist union federation, originating in 1948 as an anticommunist split - off from CGT. Marc Blondel is FO general secretary.

6. SUD (Solidaires / Unitaires / Democratiques ~ Solidarity / Unity / Democracy) Small union federation founded in early 1989 by elements suspended by the right-wing leadership of the CFDT. Leadership dominated by radicals.

8.9 LOCAL GOVT IN FRANCE

France is a Unitary State. There is no division of powers between the Centre and its parts. The local governments in France can be divided into four categories, namely, the department, the arrondissement, the canton and the commune.

THE DEPARTMENTS

The whole territory of France is divided into eighty-one departments for the purpose of local government. So every inch of area of France comes under any one of the departments. The departments in France are further classified into four classes on the basis of their importance. The top most class of departments are again classified as special class. This status is given to fifteen departments which are situated in important cities. The next classification is called the first class and nineteen departments come under this class. In the second class there are twenty two departments. Thirty-four departments come under third class.

The Legislative branch of department is known as France Council-General. This council is composed of Councillors who are directly elected from the people for a term of six years. As usual one half of them retire after every three years to make the France Council general a living organ. The general

council holds two regular sessions each year, one in April and the other between August and October. In the August session the council elects its President to preside over it. It also elects a Vice-President and a Secretary. It may be mentioned that the officers are elected for only one year and they are eligible for re-election.

POWERS AND FUNCTIONS

The powers and functions of the general council may be discussed under three headings. 1) general supervision 2) departmental administration 3) communal administration.

Before we discuss the general supervisory work of the departments it is necessary to know the relation between the department and government. The convention is that the government will always seek the opinion of the council with regard to matters concerning the department before they act. Moreover, in many matters the opinion of the council is always the deciding factor. The services performed by the department on behalf of the state includes, free medical assistance, assistance to old, infirm and incurable, family allowances, education of subnormal children and social protection of the blind.

In the departmental matters, the powers of the Council are extensive. Under the law of 1871, 22 items are listed in the departmental functions. These include departmental property, departmental, highways and all schemes which are financed from departmental money.

The Council General has considerable power over the communes in the department. It exercises a general supervision over the communes. It also control almost everything which touches two or more communal services and administration. It can fix rates to be charged in hospitals.

THE ARRONDISSEMENT

For administrative convenience the departments are divided into arrondissements. It is very important to note that these units are no local government units. These units have no corporate personality. The Arrondissements are like the zone of the Delhi Municipal Corporation. Generally, in a department there are three or four arrondissements. But in a small department like Belfour there is no such division at all. The capital town

of the department and the adjoining area is always one arrondissement. The minimum population of an arrondissement is 100,000 people.

Like the departments, the arrondissements are also divided into four classes namely special class, First class, Second class and Third class on the basis of their relative importance.

THE CANTON

An arrondssement, is again divided into cantons. Like the arrondssements the cantons are also not the unit of local government. It has no corporate personality.

THE COMMUNE

The commune is the smallest unit of local government in France. Each canton cosists of a number of communes. In the local government hierarchy the commune stands at the bottom. In fact, this is the only unit which has come down from the pre-revolution era. It is denned by the French municipal code as "many tract of territory the precise limits of which were defined by the decree of 1789 or which has been recognised by an subsequent law of decree".

Every commune in France has a council which is the legislative wing. It is called as council municipal. The legislative organ is selected directly by the people of the commune. The number of councillors ranges from eleven in the smallest commune to thirty seven in the biggest one. The head of the chief executive is the Mayor. He is the head of the administration and elected by the municipal council. The Mayor is from the councillors with a term of six years. He is also the presiding officer of the council.

POWERS AND FUNCTIONS

The powers of the communes are laid down in the Law of April 5,1884 and it has been amended several times, but no fundamental change has been made. The law consists of 163 Articles which define the role of the communal government. The functions include the maintenance of official buildings and cemeteries, the debt service, the salaries and pensions of municipal employees, the maintenance of public roads and of expenditure on public assistance and the rural police. Further, the law is so framed as to meet the basic needs of both

Check Your Progress

8. Explain the French Local Government System.

the big and the small communes. In large communes the law some times imposes additional duties, for example, when a commune has over 20,000 people, it is obliged to have a bureau of hygiene.

8.10 CIVIL SERVICE

The French civil service may seem almost identical to its counterparts in other countries. It includes hundred of thousands of jobs in a whole variety of fields, most of which are routine. There are typists, secretaries, and technicians of all kinds. Yet even these low-grade employees of the State, by being functionaries (from the expression function publique which applies to the civil service), have privilege and generally possess a status which differs more markedly form the status of private employees than it does for their counterparts in Anglo-Saxon countries (if not Germany or Italy).

Because of these status advantages and benefits, which they gave, the civil service quickly became a pole of attraction. This was possible only because the service was very large with respect to the whole population from very early on. It had 200;000 members in 1871, about four times the size of the British civil service at the time; it was over a million in 1950, while the British civil service did not reach 700;000 at the same period, though the French population was smaller. Size differences were due in part to the fact that French teachers are civil servants, while English teachers are not; but part of the difference was due to other branches of the local government service being much less well staffed in France than in other European countries. This is not merely a legal distinction, it means also more centralisation. It means a comparatively greater attractiveness of the civil service because of better career prospects than in the smaller local government service. It means that the French civil service knows opportunities offered by civil service careers.

THE GRANDS CORPS

Yet these characteristics would not have given the French civil service a sense of mission had no its structure been shaped vertically for centuries, and more systematically by Napoleon, by a number of "corps", each in charge of a particular segment of the service. Indeed, until 1945, thereby scarcely was a French civil service. Admittedly, all the functionaries had some common rights, given by special laws (as on pension), but there was neither a general "code" of the civil service (this was passed in 1946 under the title of Statut de la

Fonction Publique), nor was there a general set of arrangements, for instance for the grading of civil servants; these were appointed by the various specialized jobs (not necessarily senior, but a least skilled), recruited on the basis of corps. These corps constituted the basic cells of the service and were supposed to have a spirit of their won (esprit de corps) which would give mark them differently from other branches and divisions and would give each of them a desire to excel. Napoleon saw the point clearly, and it was he who was to make sure that these corps could have privileges and a tradition. As these divisions were prejudicial to the unity of the service and fostered inequality, postwar reforms tried to abolish the corps and replace them by general grades. But the "spirit" dies hard, and, perhaps more importantly, the 1945 reforms of the civil service did not abolish the most prestigious of the corps, the grands corps, which in the economic field (Inspectorate of Finance), the home and local government sector (Prefectoral Corps), various technical branches (Corps of Mines, Corps of Roads and Bridges), have been for generation the pole of attraction of aspiring civil servants. With their prestige and power, they managed to survive. The reforms tried to link them to the rest of the service, but this was to no avail. Up to the present day, the French civil service continues to be run, in most of the ministries, by members of these grands corps. Though each of them has barely a few hundred members, they run the civil service and give it is tone.

THE GRANDS ECOLES

The domination of the grands corps through the peculiar training given in a few elite schools. In order to recruit the best possible candidates, the civil service sets up difficult examinations. But, in order to achieve a standard of technical excellence, it became natural to train the new recruits in special schools of the corps itself. These schools used to take also some outsiders to the corps, but the main purpose has always been to provide the special training of the elite, which was from the start an elite of intellect and education, not a social elite.

There are many "grandes ecoles" of this type, some of them old (School of Mines, for instance), some of them recent (School of Taxes). Two are particularly important because of their general impact on the civil service. One is the Ecole Polytechnique, created in 1795, originally to provide officers for the artillery and engineering branches of the army; it gives the nation its best

technical administrators. The other is the National School of Administration (ENA) created in 1945 as part of the effort to unify the civil service and prepare candidates for higher management jobs in all government departments (including the Foreign Service). Moreover, a school of similar status, the Ecole Normale Suparieure, trains the most brilliant of the future secondary school and university teachers. Competition for entry is fierce. The School of Administration is a post graduate school, which provides students with one year of training in the field ("stages") usually in the provinces, a year of study in the school itself, and a further stage usually in a larger firm, before new administrator is posted where he has chosen to go (in fact, only top candidates can choose, as the others are left with the remaining places). The final examination, which leads to the posting, decides in particular whether students are to become members of a grands corps; typically, the first twenty can do, while the rest become administratures civils and will not normally reach the very top posts of the civil service. A sign of the current malaise has been the refusal, in 1972, by some of the best students to enter the grands corps; the generation of 1968 chose to become administrateurs civils, on the grounds that the careers of a civil servant should not be decided by the rank obtained at twenty-five in a series of examinations.

The fact that private enterprise does attract many civil servants who have gone through the grands ecoles is thus of great value, since it provides many of the fliers with an added incentive and many of the disappointed ones with the chance of a new career.

The move from the civil service to various sectors of private enterprise (or to nationalised industries) is common, fashionable. It exists because of the reputation of the service and of the reputation of the training schools. As a result, the private sector finds itself in the intellectual dependence of the civil service (rather than the other way around, as in the United States). It also clears the way for youngest men in the various corps and accounts for the fact that in France, unlike Britain, men at the top of the service are usually in their forties. And it provides for many personal links between business, the nationalised industries and the bureaucracy. The civil service is at the centre of things; it can lead the economy directly and indirectly. It can endow its members, as a result, with a sense of the importance of their role, which increases in turn even more the feeling of mission which has characterized the French civil

Check Your Progress

9. Discuss the Structure of Civil Service in France.

service, eventhough it might also spread throughout the service-and perhaps at the lower echelons more than at the top-as exaggerated sense of power and the will to play with it.

SUMMARY

The V Republic of France has considerably restricted the powers of Parliament. Another feature is Parliament cannot remove the government from office unless a motion of censure receives the support of an absolute majority of Assembly's total membership. The French Parliament is not a sovereign law making body. The subjects on which can legislate are enumerated in the constitution. There is unity of civil and criminal justice. The ordinary courts are tribunals. Above the ordinary courts come the courts of Appeal. The highest court is the Supreme Court of appeal. The special feature of French Judicial System is that there are separate administrative courts to try suits brought by private individuals against officials. The study of Local Government in France shows greater local autonomy is the need. The Municipal Councils is not concerned with immediate problems but are interest in long-term projects. Since the beginning of the Firth Republic, Party System has undergone a transformation. Some of the parties have disappeared. Because of the party pattern, French Political system finds it difficult to ascertain public opinion upon a given matter. Because of the improper working of party system, people are loosing faith in democracy. French civil servant has a very good position. The salary for the public servants is controlled by the France ministry. The right to form association is given to the public servants. Another appreciable feature here in France is the civil servants are given the right to strike. The functioning of civil servants is efficient in France.

KEY WORDS

Bi-Cameral - Universal suffrage - Legislative Dead lock - Non-organic Bill - Justices of Peace - Court of Arrondisement - Court of Cassation - Court of Conflict - Council D' Etat – Communes –Arrondisement – Metropolitan – Perfect - Sale of office - Grand corps

ANSWER TO CHECK YOUR PROGRESS

For Question No 1	Refer Section 8.1
For Question No 2	Refer Section 8.3

For Question No 3	Refer Section 8.4
For Question No 4	Refer Section 8.6
For Question No 5	Refer Section 8.6
For Question No 6	Refer Section 8.8
For Question No 7	Refer Section 8.8
For Question No 8	Refer Section 8.9
For Question No 9	Refer Section 8.10

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MODEL QUESTIONS

1. Describe the Composition and functions of French Parliament.
2. Describe the advantages of Administrative Law.
3. Explain the problem of multiparty system with reference to French political system.
4. Describe the structure of Civil Service in France.

UNIT - 9

GOVERNMENT OF SWITZERLAND – GENERAL FEATURES – FEDERAL COUNCIL – FEDERAL ASSEMBLY – FEDERAL TRIBUNAL

INTRODUCTION

Switzerland is in Europe, it is a small country. The people of Swiss differ in race, religion, language. European wars did not affect the political system of Switzerland. This unit traces the constitutional development of the trends towards federalism are discussed. The direct democracy empower the people to revise the constitution. Federal council in Switzerland is the executive authority. This is called as collegiate executive. it is different from Parliamentary and Presidential. The Parliament of Switzerland is called as Federal Assembly, Council of states and National Council are the two houses. The power of enjoyed by both the houses are identical. Swiss federal Judiciary is known as Federal tribunal. It is the supreme judicial authority. There are no branches to the judiciary.

OBJECTIVES

1. To trace the evolution of Switzerland.
2. To know the features of Swiss constitution
3. To understand the uniqueness of the federal council
4. To know about the position of Federal Assembly in Swiss constitution.
5. To understand why the power of two houses are identical.
6. To learn about the functions of federal Judiciary.

STRUCTURE

Land and people

Urity in Diversity

Political culture

9.1 LAND AND PEOPLE

Switzerland is a small and landlocked country of Europe. Swiss political institutions occupy a very significant place in the sphere of major constitutional systems of the world. Indeed, the Swiss system has successfully integrated a population characterised by social, linguistic, cultural and religious diversities into a united nation. Besides, Switzerland has been a republic throughout the ages.

This small country situated approximately in the centre of western Europe and surrounded by Italy, France, Germany and Austria has an area of 15,000 sq miles. The topography of the country is dominated by the mountains, primarily the Alphine mass the central part of which convers 60% of the Swiss territory. The country is divided into three major regions the Jura, the Plateau and the Alps. The Jura mountains cover nearly 10% of the surface of the country; the

plateau makes up approximately 30% and Alps the remaining 60% of the territory of the country.

Climate and vegetation are extremely varied in Switzerland. About a quarter of its territory is unproductive and another quarter covered with forests. Cattle rearing and dairy farming are the only feasible agricultural activities in the mountainous districts while in other areas both cash and food crops are raised. The cultivable area of the Midlands is not only interrupted by flow of rivers but is also being steadily cut back by the increasing dense settlement of population which accompanies industries. But the country is poor in mineral resources. There is a high degree of industrialisation, since the domestic economy is dependent on the export of those products processed from imported raw materials. Its enormous hydroelectric power facilitates easy and rapid industrialisation. The greatest wealth of Switzerland is its natural beauties which have made tourism an important factor in its economy.

Though a small country, Switzerland is quite densely populated despite the fact that its demographic composition in unequal like its topographic make-up. According to the census in 2001, Switzerland had a population of 7.1 million, with a growth rate of 0.3% and a density of 152 people per sq km. Today more than half of the country's population live in urban agglomerations. The work force is approximately 3 million people-10% of them self-employed, 8% in agriculture and forestry. 48% in industry and trades and 34% in the service sector.

One striking feature of growing Swiss population is that while the growth of the native population swindled rapidly over the years-it was 0.3% 'n 1960-the immigration of foreigners into the country was steadily growing. It stood at one million-17% of the population and this was the principle cause of the overall population increase. This growing influx of foreigners into the country triggered some severe domestic upheavals and in 1970 there was a popular initiative aimed at a massive reduction in the number of immigrants; but the initiative was defeated in a referendum.

9.2 UNITY IN DIVERSITY

Apart from the overwhelming physical beauty that abounds everywhere, another striking characteristic of Switzerland is its linguistic diversity. Within the space of a few short miles one can find people speaking German, French,

Italian and Romanasch languages. A small village may be exclusively French speaking and neighbouring village may be exclusively German speaking. Among those four languages, German is the predominant one. Article 116 of the Swiss Constitution names these four languages as "national" languages, but declares the first three as "official" languages. All these three languages are used in governmental business, in legislatures and in courts. The Constitution specifically provides that all the three official languages must be represented in the Federal Tribunal.

The religious composition of the country is quite complicated like its linguistic make up. Though most of the people are Christians they are divided into Protestants and Catholics. A sizable section of the people profess no religion. Originally the Protestants outnumbered the Catholics; but as a result of immigration, the Catholics have outstripped the Protestants in the total population. According to 2001 census, the Catholics form 49.4% and the Protestants 47.7% and others 2.9% of the population. Freedom of religion is Constitutionally guaranteed and by a referendum in May 1973. The two Articles of the Constitution which banned the Jesuit order and forbade establishment of religious orders in the country were removed from the Constitution.

In the midst of these linguistic, religious diversifies, the Swiss people have built up an amazing unity. That is their uniqueness. Switzerland is traditionally a neutral country and has not till now opted for membership in the U.N.O.

9.3 POLITICAL CULTURE OF THE SWISS

Quite often the Swiss people are criticised for being too complacent, conservative, tradition bound, ridden with local patriotism and discouragers of creativity and intellectual adventure and in support of this the critics cite the case of the renowned architect Le Carbusier who felt compelled to leave his country in order to develop new concepts. But these criticisms are far from truth. It is true that the Swiss pride themselves in their "home patriotism", but it does not mean that they are victims of parochial or chauvinistic tendencies. To an outsider, their home patriotism may appear to be forces of division rather than of unity. But where honour, integrity and prestige of the country is at stake, the Swiss are united in solemn support.

A conscientious observer of Switzerland finds that "the best kept secret of this country is its national character." It imbibes the virtues of sobriety, tolerance, modesty and communal conscience and these are the traits of their political culture. Sobriety includes honesty, a penchanat thrift, a sense of order and discipline, a spirit of self reliance, and a certain aloofness. Each generation transmits to the next one a disposition towards stubborn tenacity and standing alone. Traditionally, they are against pretentions and display. They honesty work for achieving something in their lives, and this reflects their belief in the doctrine of Calvin that success and wealth are the identification tag of virtue. They believe in the dignity of labour. Besides, though Switzerland is a federation with strong centralisation trends, the principle of cantonal autonomy is strictly adhered to. Moreover, full sanctity is attached to the autonomy of units of local administration called Communes. In this way the norms of communal and cantonal autonomy prevails side by side the federal set up. It is owing to the prevalence of this type of political culture that the Swiss people have no problems of language, religion or politics that so easily beset the politics in other countries.

9.4 SWISS FEDERALISM

The Swiss federal system offers one of the oldest examples of federalism although its designation as "confederation" is a misnomer. It constitutes the basic feature of the Swiss government system and it is the chief instrument through which Switzerland has attained national unity without destroying the autonomy of cantons. Switzerland is by no means a confederation owing to the fact that the union is complete and secession is not permitted. At present there are 23 cantons-20 full and 6 half cantons in the Swiss federation.

The Swiss system meets every requirements of federalism. First, it has a written and rigid Constitution. As a comparatively longer document it goes into good many details-dealing with matters such as fishing and hunting, liberal professions, gambling etc.The reasons for this plethora of details in the Constitution is the desire of sharp delimitation of the respective competence of federal and cantonal governments.

Secondly, the Constitution distributes powers "between the central and cantonal governments. It specifics the powers of the centre which includes foreign affairs defence war and peace, railways, federal roads, bridges, post

and telegraphs, banking, commerce, coinage, higher education, marriage, naturalisation etc. It also enumerates certain concurrent power over which both the centre and the cantons have jurisdiction such as insuranace, press, industry, highways etc. In case of conflict between the central and the cantonal laws over a concurrent subject, the former will prevail. All the residuary powers are given to the cantons.

Thirdly, each Canton has its own Constitution. The federal government guarantees the Cantonal Constitutions. However three limitations have been imposed on the Cantons. They are, (1) The Cantonal Constitution should contain nothing against the federal Constitution. (2) The Cantons must maintain republican, representative and democratic form of government; and (3) the Cantonal Constitutions must have been accepted by the people and may be amended on the demand of an absolute majority of the citizens. The Cantons, irrespective of their size or population, are equally represented in the upper House of Federal assembly. The Cantons cannot propose amendments to the federal Constitution; but all amendments to the federal Constitution are subject to the ratification by the majority of people in a majority of Cantons.

Fourthly, there is the Federal Tribunal, the highest judiciary in the realm. Though a federal judiciary, it has got only limited power of judicial review-it can review and invalidate Cantonal Laws not Federal Laws. It decides cases of public law between one Canton and another, it hears appeals over the judgements of the lower courts.

CENTRIPETAL TRENDS IN SWISS FEDERALISM

The Swiss federation is not free from the elements of centralisation of power. With the march of time and change in the socio-economic pattern of life, the central government has enhanced its authority. Since 1874 the federal authority extended its power over civil and criminal law alcoholic beverages, traffic, transportation, banking, social welfare, and industrial legislation, public health etc. The financial position of the federal government has been strenghened by the creation of new sources of revenue. Economic depressions, demand for ever-increasing social services and wars were potent factors for the centralising trends in the federation. During the world war II the federal government was empowered to levy even direct taxes and excise duty. Thus the augmentation of these federal powers "has necessarily exalted the prestige

and influence of the government of the confederation at the expense of the separate cantons". (Zucher)

However, the tendency of centralisation does not vitiate the federal character of the polity. The view of Andre Siegfried the "the Cantons will gradually cease to be soverign at all and will become simple district adminstrations carrying out the behests of the federal authority" is too pessimistic. The correct position, as Zucher observes, is that inspite of the extension of federal powers the Cantons" remain important elements of the Swiss constitutional system and it is by being a citizen of a Canton that national citizenship is ordinary acquired; and laws and relation of the respective Cantons still determine many of the citizen's "ordinary civil right in Switzerland". Moreover, the federal government depends upon the Cantons for the execution of the federal laws and the latter assist the former in various matters of national administration.

9.5 MODE OF CONSTITUTIONAL AMENDMENT

In Switzerland amendment to the Constitution is known as revision. This may denote either a total revision or partial revision. The former refers to the substitution of a new Constitution for the old one while the latter refers to the specific amendments to the existing Constitution. The following are the procedure adopted for the two types of revision.

If both houses of the Federal Assembly pass a bill to revise the Constitution either in whole or in part that bill is submitted to the people for their approval. It is approved by the majority of the citizens and the majority of Cantons, the bill becomes law and the Constitution stands revised. In determining the will of the Cantons, each Canton possesses one vote and each half Canton half a vote. If one house of the Federal Assembly approves, of a bill for revision, while the other does not, the following procedure is followed.

The question whether there should be a revision of the Constitution is referred to the people. In this case, the opinion of the Cantons is not solicited. If a majority of the Swiss citizens vote in favour of the revision, fresh elections to the Federal Assembly are held. The newly elected Federal Assembly proceeds to consider the revision. If the bill for revision is approved by both Houses, it

Check Your Progress

1. Explain the Political Culture of Swiss.
2. Explain the mode of Amendment.
3. Explain Swiss Federalism.

is submitted to the people at a referendum. If a majority of the voters and majorit of Cantons approve of if the Constitution is accordingly revised. Referendum i compulsory for all constitutional amendments.

9.6 CONSTITUTIONAL INITIATIVE

The Swiss Constitution empowers the people also to initiate revision t the Constitution. A total or partial revision of the Constitution may be initiate by atleast 50,000 Swiss citizens. If the initiative is for total revision th established procedure mentioned in the Constitution will be followed.

If the initiative is for a partial revision of the Constitution, a differen procedure is followed; in this case the initiative could be either formulated o unformulated. When the initiative is presented in the form of a bill, it is know as a formulated initiative; if on the other hand, the initiative contains the genera principles only, it is known as an unformulated initiative.

An unformulated initiative follows the following procedure; If th Federal Assembly, approves the general principle of the initiative it proceed to draft a bill on the lines suggested in the initiative and the bill is then presente to the people and to the Cantons in a referendum. If the Federal Assembly i not in favour of the initiative, the question whether there should be a revisio to the Constitution or not is referred to the people. If the majority of the peopl vote for revision, the Federal Assembly drafts the desired revision and submit if for the approval of the people and of the Cantons.

A formulated initiative follows the following procedure. If the Federa Assembly is in favour of the formulated initiative, it is submitted to the peopl and to the Cantons in a referendum. If the Federal Assembly is not in favour o the formulated initiative, it could resort to either of the two ways: The Federa Assembly may recommend the rejection of the initiative by the people in th referendum or it may submit a counter-proposal along with the formulate initiative for referendum. Whichever is accepted by the majority of the peopl and by the majority of Cantons in the referendum, will come into force.

In theory the process of amending the Constitution is much more rigi than of U.S. but in practice, it has proved much less so. It has undergone abou 60 partial revisions since its inception in 1874. In 1880 and in 1935-tw

initiatives for the total revision of the Constitution were initiated, but both were rejected.

9.7 FEDERAL COUNCIL

The supreme executive authority of Swiss confederation is exercised by a commission of seven men known as the Federal Council (Bundestrat). This is a plural or collegiate executive. The framers of the Swiss Constitution provided for this unique executive by combining the advantages of both the presidential and the parliamentary types of executives. In no other republic is executive power entrusted to a council instead of to one man and in no other free country has its working so little to do with party politics. "The Council is not a cabinet, like that of Britain... for it does not lead the legislature, and is not displaceable thereby. Neither is it independent of the legislature like the executive of the United States... and though it has some of the features of both the schemes it differs from both in having no distinctly partisan character. It stands outside the party, is not chosen to do party work, does not determine party policy, yet not without some party colour".

9.8 STRUCTURE

The seven members of the Federal Council are chosen for four years by the Federal Assembly at a joint sitting of the two Houses during the December session. Casual vacancies also are filled up by the Federal Assembly. Any Swiss citizen eligible to become a member of the lower chamber, the National Council, may be elected as a Federal Councillor. No two members of the Federal Council may be from the same Canton. Blood relatives or relatives by marriage may not be members of Federal Council at the same time. By convention Zurich and Berne, the two biggest Cantons, are always given a member each, and the remaining five seats are distributed among the other Cantons. There is no restriction on the re-election of members. Members have held office for fifteen to thirty years. Members of the Federal Council are usually selected from the two Houses of the Federal Assembly. It should be noted that the Constitution does not prescribe this. On being elected Councillors, they resign their membership in the Federal Assembly.

The Federal Councillors are not chosen from the parliamentary majority as in Great Britain. The Federal Council is not a partisan body. The Councillors

are selected from four different parties. They are chosen for their administrative skill, mental grasp, good sense, tact and temper. While choosing the Councillors, care is taken to give representation to the important languages and regional interests, linguistic groups and the religions. This ensures protection of the minorities. Each year one of the Federal councillors is elected by the Federal Assembly as President and another as Vice-President. Usually the Vice-President of the outgoing man is elected as President for the following year. No one can act as President for two consecutive years.

The Swiss President is merely the chairman of the Federal Council. He represents the confederation on ceremonial occasions at home and abroad. He conducts the business of the Council and supervises its work. In urgent cases the President may act on behalf of the Council. In case of a tie in the Council, the President has a second vote. The President cannot veto legislations. Like any other member of the Council, the President is in charge of one of the departments of administration. He has no special powers or privileges. The Swiss President is a President of no great importance: Yet, the Federal President commands considerable influence and is the most distinguished office open to political thriving in that country.

The Federal Council is not an independent or coordinate branch of government. It functions as a subordinate agency of the Federal Assembly. Federal administration is carried on by seven departments corresponding to the number of Federal Councillors. The seven departments are Foreign Affairs, Justice and Police, Millitary, Finance, Agriculture and Industry, Transport, Communication and Energy. The portfolios are redistributed among members each year. The chief of one department is assigned as a substitute head of another department and this enables the members to acquire first hand knowledge about the intricacies of all departments in turn. The Federal Council is not a cabinet in the British sense of the term. The Federal Council derives its powers from the Constitution. The Federal Council is not formed from the party in majority in the federal legislature, its members are elected from different party groups. It has no Prime Minister. The policy followed by the Council is prepared by the Assembly. The Federal Council cannot dissolve the legislature. The Federal Assembly too cannot dismiss the Federal Councillors.

The quorum of the Federal Council is four and it meets twice a week. Decisions are arrived at by a majority vote. Since the Federal Councillors are individually responsive for their action to the Federal Assembly, there is no collective responsibility of the British type in Switzerland. The Federal Councillors can attend and speak in either House of the Federal Assembly. They can taken part in debates also. But they are not entitled to vote. The sessions of the Federal Council are held in camera.

9.9 POWERS AND FUNCTIONS

The Federal Council enforces the laws and ordinances passed by the Federal Assembly. It prepares and submits to the federal legislature an annual report regarding its work in domestic and foreign affairs. Foreign affairs of Switzerland are conducted by the Federal Council. It controls and supervises the army. The Defence of the country is in the hands of the Federal Council and it maintains peace and order. The Federal Council guarantees the Cantonal Constitutions. The treaties agreed to by the Cantons among themselves or with foreign countries are examined by the Federal Council. Wherever necessary, it supervises the work of cantonal administration. The conduct of all federal employees is supervised by the Federal Council. It administers the finance of the federation and the annual budget is prepared by it. It makes appointments to all federal offices if they are not entrusted to the Federal Assembly or the Federal Tribunal or to any other authority.

The members of the Federal Council attend both Houses of the Federal Assembly and answer questions, but do not vote. Most of the bills, including the budget are introduced by the Federal Councillors. They are introduced either on their own initiative or as per specified requests made by the members of the Federal Assembly. Bills introduced by the members of the Federal Assembly are just referred to members of the Federal Council. The Federal Council examines the laws and ordinances of the Cantons that are required to be submitted for its approval.

Cases concerning the behaviour of federal officials are tried by the Federal Council. It sees to the execution of verdicts of the Federal Tribunal. Appeals of private individuals against the decisions of various departments and against the decisions of the Federal Railways Administration are heard by the Federal Council. It has also appellate jurisdiction over decisions of the

cantonal governments in cases relating to differences arising out of treaties relating to trade, patents, customs and cantonal elections. Of late much of the jurisdiction of the Federal Council over administrative cases has been transferred to the Federal Tribunal.

The functions of the Federal Council are only supervisory. The policies are laid down by the Federal Assembly, Article 71 of the Swiss Constitution clearly states that the Assembly is the supreme power in the confederation. The Federal Council may be required to make special reports by the Assembly. Thus the executive in Switzerland is subordinate to the legislature. However, if the Federal Assembly disagrees with the decisions of the Federal Council, the Councillors do not resign. On the contrary they submit to the will of the Assembly. In the words of A.V.Dicey, the Federal Council is "expected to carry out the policy of the Assembly and ultimately the policy of the nation just as a good man of business is expected to carry out the orders of his employer"

The Swiss federal exeeutive is neither parliamentary nor presidential. It is unique by itself. It is not a parliamentary cabinet because there is no political solidarity, homogeneity or team-work. In the cabinet type of government the ministers belong to the Parliamentary majority party and are responsible to the legislature, individually and collectively for their official acts and remain in office only as long as they enjoy its confidence. The Swiss Federal Councillors, on the other hand, are not members of the Federal Assembly. If they be so at the time of their election they are required to resign their seats in the Assembly. All of them do not belong to the majority party in the Assembly. Nor are they leaders of political parties. But they represent all interests, people and territories and are able administrators. Though they participate in the debates of the Assembly and answer questions, they, do not advocate any policy. The Councillors do not necessarily support each other. They may be divided on any questions, in the legislature and they take sides. The Council is not granted the leadership of the legislature as the cabinet is. However, the Federal Council does not resign even if its measures rejected by the Assembly. Nor does the former have powers to dissolve the latter. All these go to show that the Swiss Federal executive is not a parliamentary type.

The Swiss executive cannot also be considered a presidential type of executive. It is not a separate branch of government as the executive of the

United States. It is, as we have already discussed, susbordinate to the legislature. In the U.S. the Congress cannot encroach upon the constitutional rights of the executive, the President. Members of his cabinet are appointed by himself and are responsible only to him. In Switzerland, the Federal Council is elected by the Federal Assembly. The executive has no power of veto over the legislative measurers passed by the Assembly. Hence, the Swiss executive cannot be regarded as a presidential type too.

The advantages of the parliamentary and presidential systems are combined in the Swiss Federal Council. Mutual confidence and co-operation between the legislature and the executive can be noticed in Switzerland. The Federal Council is representative of the parties, opinions, and areas in the country but is not pledged to any particular political programme. The role of the opposition is conspicuous by its absence. The Federal Council is a non-partial body which advises the influences the Federal Assembly. Similar to the American executive the Swiss executive is permanent and stable. This secures continuity in policy and permits traditions to be formed.

AN ESTIMATE OF THE SWISS COLLEGIATE EXECUTIVE

The functions of the Federal Council are only supervisory and it has no initiative of its own. When it exercises prerogatives there: must be either sanctions subsequent ratification of the Assembly. Of late, the powers of the Federal Council have grown. A lengthy tenure of office adds to a Councillor's official prestige, administrative skill and political judgement. Legislative power has been transferred to the Assembly. In times of emergency full powers are granted to the Council by the Federal Assembly.

9.10 FEDERAL ASSEMBLY

The Swiss Federal Legislature is known as the Federal Assembly. It consists of two Houses, the Upper House is known as the Council of States and Lower House is known as the National Council. These two Houses possess almost identical powers. The Federal Assembly is supreme because the law enacted by it cannot be vetoed by the President of the confederation and they cannot be declared unconstitutional by any court of law. Article 71 states that "subject to the rights of the people and cantons, the supreme authority of the confederation is exercised by the Federal Assembly".

Check Your Progress
4. What is Federal Council?

9.11 THE COUNCIL OF STATES

The Council is the Upper House of the Federal Assembly. This House represents the Cantons and all Cantons are equally represented in it. Each full Canton sends two representative and each half-Canton sends one representative. The total membership of the House is forty-six. The method of election and qualifications of the members of the Council of States are not prescribed in the Constitution. Members of the Federal Council and the Federal Tribunal cannot be members of Council of States simultaneously. In three different ways the states' councillors are elected. In the Canton of Berne the Cantonal assembly elects the councillors. From Obwalden, Nidwalden and Appenzell the States' Councillors are elected by the 'moot' (the primary assembly). In the rest of the Cantons the citizens elect the deputies by secret ballot. Of all 26 Cantons' Glarus is the only Canton which elects the states' councillors for a three years term; in all the other Cantons they are elected for 4 years. Members of this House are re-elected as long as they wish to serve in it. This give stability to this House. Salaries and allowances are paid to the representatives by the Cantons themselves. This provision is contained in the Constitution itself. When members of the Council of States serve on legislative committees the federal government pays them compensation.

The Council of States elects its own President and Vice-President from among its members. Members of the same Canton cannot be elected to both these offices for the same sessions (All sessions held in one year are treated as one session). Representatives of the same Canton cannot be elected for two consecutive sessions. Usually, the Vice-President of one year is promoted to the office of President during the following year. The President is largely responsible for the determination of the daily order of the business to be transacted. In case of a tie he has a casting vote. The Council of States meets atleast once in a year in ordinary Session, ordinary sessions may be summoned by the Federal Council or on a request by one-fourth of its members or on request made by five Cantons (Art 86).

Attendance of an absolute majority of the total membership of the House is essential for the valid transaction of business, i.e., not less than 24 members must be present for deciding an issue. The constitution provides that the deputies need not vote according to the instructions from their Cantons. (Art-91). This

means that members should vote according to their conscience and not according to instructions either of the cantonal assemblies of their parties.

The Council of States possesses equal rights and powers with the National Council. Bills, including money bills, can be introduced in both Houses. All bills must be passed by both Houses. Because of its smaller size, deliberation in the Council of States are dispassionate and more detailed. Business is transacted rapidly in this House. It is not a powerful second chamber like the American Senate. The Council of States has justified its utility as a second chamber.

9.12 THE NATIONAL COUNCIL

The Lower House of the Federal Assembly is known as the National Council, it is a representative House of the people. Its composition and organisation are regulated by the federal Constitution. Members of the National Council are elected by the people on the basis of proportional representation. The National Council consists of 200 members elected for four years. The seats are allocated to the parties in proportion to the number of votes they receive.

"Every Swiss citizen who has entered on his twentieth year is entitled to vote; and any voter, who is not a clergyman may be elected a Deputy". Each Canton or half-Canton forms an electoral constituency and seats are allotted to it in the ratio of 1 for every 24,000 of the population. But each Canton or half Canton, whatever its population, must have atleast on Deputy. The constituencies are fixed not by the executive as in other countries, but by the Federal Assembly. The National Council is not dissolved earlier than four years. It may be dissolved along with the other House if the two Houses differ on the issue of total revision of the Constitution.

No one can be a member of both Houses at the same time. Each member of the National Council receives besides his travelling expenses, a daily allowance for each day of attendance. The National Council meets four times a year in March, June, September and December. The federal Constitution gives a member of either the National or States Council the right to initiate legislation. Every member has the right to present a bill or formulate a decree. So far little use has been made of this.

There is no official opposition in the National Council. Political parties do not play a very important part in the legislature in Switzerland. The National Council cannot remove the Federal Council from office, Ultimate sovereign power rests with the people and not with the legislature.

The presiding officer of the National Council is the President. A President and a Vice-President are chosen by the House from among its members for each session. The President has an ordinary vote as well as a casting vote. The office of the President of the National Council is not so powerful and influential as the office of the speaker of the American House of Representatives. Yet, the President of the National Council enjoys a special prestige among his party associates. The system of compulsory rotation of office is meant to guard against the concentration of power in one man, or in one party, Canton or linguistic group.

9.13 POWERS OF THE FEDERAL ASSEMBLY

The Federal Assembly, composed of the National Council and the Council of States, possesses legislative, executive and judicial powers. The principle of separation of powers' does not find a place in the Constitution of Switzerland. A constitutional limitation imposed on the Federal Assembly is that people could overrule its decisions at a referendum. Both chambers of the Assembly are co-ordinate in respect of their powers and functions.

LEGISLATIVE POWERS

Legislative measures prepared by the Federal Council are enacted into laws by the Federal Assembly. The Federal Assembly incompetent to enact laws and decrees.

It determines and enacts necessary measures to ensure the due observance of the Federal Constitution, the guarantees of Cantonal Constitutions, the fulfillment of federal obligations and nation's independence and neutrality. The Federal Assembly passes the annual budget. No federal, Cantonal or communal tax can be charged unless the citizens have expressly approved both its establishment and its rate, by popular vote. It audits and approves the accounts of the Federal Council. It authorises loans, creates federal offices, fixes the salaries of federal officers and revises the federal Constitution. The Federal Assembly determines what laws or resolutions are urgent. The Assembly may

demand all kinds of information regarding administration of the confederation. The laws passed by the Federal Assembly should be submitted to a referendum if demanded by 30,000 Swiss citizens or 8 Cantons within 90 days of their passage.

EXECUTIVE POWERS

The Federal Assembly at a joint sitting of its two Houses elects the seven members of the Federal Council. One of the Federal Councillors is annually elected by the Assembly to serve as Federal President and another is chosen as Vice-President. The judges of Federal Tribunal, the members of the Federal insurance Tribunal and the Commander-in Chief of the army are appointed by the Federal Assembly. The Assembly may be empowered to elect or confirm other officials. It supervises the activities of the civil service. Administrative disputes and conflicts of jurisdiction between federal officials are decided by the Federal Assembly. It controls the federal army, declare war, concludes peace and ratifies alliances and treaties. On appeal from the Federal Council, the treaties concluded by the Cantons among themselves -and with foreign countries must be confirmed by the Federal Assembly.

JUDICIAL POWERS

At a joint sitting of the two Houses, the Federal Assembly grants pardon. Amnesty is granted by either chamber separately. The Federal Assembly may hear appeals against the decision of the Federal Council relating to administrative disputes.

Both houses of the Federal Assembly play a leading part in amending the federal Constitution. Either House can initiate the total or partial revision of Constitution. Even when an amendment is initiated by the people the Assembly plays its due part in the procedure.

The National Council and the Council of States enjoy equal powers. Bills can be introduced in either House. All legislative measures require the concurrence of both Houses. Annual business like the budget is taken up for consideration by either House by rotation. The members of the Federal Council are responsible to both Houses. Deadlocks between the two Houses are usually resolved by convening a joint conference committee, composed of the representatives of both Houses. If the deadlock cannot be resolved the matter

under dispute is dropped. Joint sittings of both Houses are summoned for three purposes [1] to select the Federal Council, the President and Vice-President of the Federal Council, the Federal Tribunal, the Federal Insurance Tribunal, the Chancellor, and the Commander-in-chief, [2] to exercise the power of pardon and [3] to resolve conflicts of jurisdiction between the Cantons and majors federal organs.

ESTIMATE

The Federal Assembly of Switzerland has been the most business-like legislative body in the world. It does its work quickly. This is due to the quality of its membership. Three-fourths of the members of the Council of States and three-fifths of the National councillors are men of University training. An average member of Federal Assembly attends the legislature regularly and punctually. Rhetoric is almost unknown in the Swiss legislature.

The process of direct legislation has considerably contributed towards the decline of the supremacy of the Federal Assembly. The legislators know well that the ultimate authority rests with people to accept and reject the laws. If a measure passed by the Federal Assembly is adopted at referendum, the credit for it goes to the people. If not, the blame is on the legislature. All these may lead to a feeling of frustration in the minds of the members of the Federal Assembly. Subsequently, the sense of responsibility is also reduced. The lead therefore, is now tak. oy the Federal Council. Many of the legislative measurers are initiated by it. Whenever the Assembly requests the Federal Council to initiate legislation on a specified subject, the latter drafts a bill and submits it to the Assembly along with a report giving the purpose of the bill. The Federal Councillor who is assigned a bill pilots in the Assembly through all the stages of the legislative process. Thus the Federal Council plays a significant part in a law-marking.

9.14 FEDERAL TRIBUNAL

ORGANISATION

The federal judiciary is known as the Federal Tribunal. This Tribunal was created by the Constitution of 1874. It was established in 1875 having its seat in Laussanne. It consists of 28 judges with 15 supplementary judges. They are elected by the Federal Assembly for six years. These judges are eligible for

Check Your Progress

5. Explain the Power of National Assembly.

re-election. The Federal Assembly also elects a President and vice-president of the Tribunal who hold office for two years. They cannot be re-elected. Any Swiss citizen eligible for election to the National Council may be appointed to the Federal Tribunal. The Federal Assembly while appointing the members of the Tribunal, ensures that all linguistic groups of the confederation are represented in the Tribunal. The Federal judges may be and often are re-elected. Re-election has resulted in more or less a life tenure. In practice, judges resign when they are seventy. The Federal Tribunal has no staff of its own. Its decisions are executed by the Federal Council acting through cantonal officials. There are no inferior courts to the Federal Tribunal. Much of the judicial work is discharged by the cantonal courts. Another judicial institution of highly specialised nature is the Federal Court of Insurance at Lucrene.

9.15 JURISDICTION

The jurisdiction of the Federal Tribunal extends over civil and criminal cases and questions of public law. The tribunal has original and final jurisdiction in the following categories of suits

1. Suits between the confederation and Cantons
2. Suits between Cantons
3. Suits between the confederation or Cantons and corporations or individuals (The value of such suits should not be less than 8,000 Francs)
4. Suits between parties who refer their cases to it (The value in such suits should be atleast 20,000 Francs)
5. Suits placed within its authority by the Constitution or legislation of a Canton and, many classes of railway suits.

The Federal Tribunal is a court of appeal against decisions of other federal authorities and of cantonal authorities applying federal law. The Tribunal also tries persons accused of treason or other offences against the confederation.

The Federal Tribunal consists of the following sections: Court of public and administrative law, two civil courts, Bankruptcy court, Court of penal cessation, Court of Arrainement, Criminal court and Federal penal court. In all cases of conflict of competence, it is the duty of the Federal Tribunal to uphold

Check Your Progress

6. Explain the powers of National Council.

the federal constitution or to declare a law passed by the cantonal legislature unconstitutional.

9.16 JUDICIAL REVIEW AND THE FEDERAL TRIBUNAL

Switzerland, as we saw earlier, is a federation. But the Federal Tribunal in Switzerland is not so powerful as the Supreme Court of the United States of America. The Federal Tribunal is even weaker that the Indian Supreme Court. The Federal judiciaries in the United States and India are guardians of the Constitutions of their respective countries. This is more so in the United States than in India. In the United States actions of the executive and the legislative enactments of the state legislatures and congress should be within the limits of the constitution. Those which are found otherwise will be declared unconstitutional by the supreme court.

The Swiss Federal Tribunal possesses a very limited power of judicial review. The constitutional provision of the Federal Tribunal is charged with the highly political duty of protecting the rights of the citizens. Yet it has no power to examine federal laws for their constitutionality. Laws passed by the cantonal legislatures alone may be declared as unconstitutional by the Federal Tribunal. The Constitution requires the Federal Tribunal to implement the laws passed by the Federal Assembly. The Federal Tribunal should also act according to the treaties approved by the Federal Assembly.

The question of judicial review has not been given much prominence in Switzerland due to the presence of referendum and initiative.

SUMMARY

Among the modern democracies Switzerland has a highest place. It is the oldest state in which popular government was very old. Modern political system of Switzerland was created in 1848. It was amended in 1874. Constitutional amendment is also explained which needs the help of the people. Federal council is neither Parliamentary nor presidential. It enjoys the executive powers. But it has no initiative of its own. Federal Assembly carries out its functions in an efficient manners. Swiss Judiciary plays am important role in Swiss Political system. Judicial Review has not been much prominence in Swiss.

KEY WORDS

Direct Democracy - Confederation - Cantons - Federal tribunal - Referendum - Initiative - Bundersat - Federal Tribunal - Confidential - Moot - Clergy man - Cantonal Rights.

ANSWER TO CHECK YOUR PROGRESS

For Question No 1	Refer Section 9.5
For Question No 2	Refer Section 9.5
For Question No 3	Refer Section 9.5
For Question No 4	Refer Section 9.9
For Question No 5	Refer Section 9.13
For Question No 6	Refer Section 9.15

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MODEL QUESTIONS

1. Bring out the main features of Swiss Constitution.
2. Discuss the powers and functions of Federal Council of Switzerland.

UNIT - 10

GOVERNMENT OF SWITZERLAND - POLITICAL PARITIES - DIRECT DEMORACY

INTRODUCTION

The role of political parties is limited in Switzerland. Direct Democracy is peculiar and admirable feature of Swiss Constitution. As Switzerland is a small country, the direct democracy became possible. As it is a small nation, people enthusiastically participate in administration.

OBJECTIVES

1. To understand the party system in Switzerland.
2. To know about the working of Direct Democracy.
3. To analyse the instruments of Direct Democracy.
4. To understand the feeling and reaction of people in accepting the Director Democracy.

STRUCTURE

10.1 POLITICAL PARTY SYSTEM

Political parties are indispensable for a democratic government. Switzerland is no exception to this general rule. There are half a dozen organised parties is Switzerland. At the same time, the party system there is marked by some special features. In fact, nowhere else in Europe are there more chances of having political parties than in Switzerland. There are so many diversities of racial character, of religion, of language and of conflicting economic interests. In Switzerland "party life is vigorous, party organisation strong and party influence considerable, yet party rivalry is free from bitterness. Nowhere else has the ship of the state been less tossed by party oscillations." The temperament of the Swiss people is naturally reflected in their political parties. Swiss political parties have no tendency to swing to extremes. Lord Bryce has correctly said that parties are known for their moderation and conservatism. The Swiss political parties play a role far inferior to that of parties in France of England. There are several reasons behind the weakness of the Swiss political parties.

The Swiss Federal Council is a stable executive and cannot be removed by the legislature. Besides, it is-a non-partisan executive. Consequently parties in the Swiss legislature are not engaged in a struggle for power as is normally the case in a parliamentary country like Britain. So there is no need for an organised party in Switzerland. It is highly significant that in the Swiss legislative members sit district-wise rather than in party blocks. The short session of the Swiss legislature is also a reason for not having the development of strong party organisation. Further the institution of direct democracies, referendum and initiative have made the legislatures unworkable. The last word in law-making rests with the people and this makes strong party organisation in the legislature unnecessary.

Speaking comparatively Swiss parties are loosely organised. They exist on a cantonal rather than on a'national basis. The absence of strong party organisation on a national basis is also due party to the fact that Switzerland has no nation-wide elections such as that of the President in the U.S.A. Another reason why Swiss political parties are relatively weak is that they have few prizes to fight for. There is no "spoils system" in Switzerland and every appointment is made on merit system. In other words, Swiss parties do not wield much patronage. Unlike parties in the U.S.A., for example, they have few plums to offer to their followers.

Finally, the Swiss are a nation of unity without uniformity. Though there are racial and religious diversities, there are few vital issues to divide them apart. In short, social and economic life in Switzerland provides little grist for party mills. As in most other democratic countries political parties in Switzerland have an extra-constitutional existence. They are not even mentioned in the constitution. Nevertheless "their existence is taken for granted". Unlike in Britain and the U.S.A. Switzerland has a multi-party system. Normally the existence of a multi-party system is associated with weak and unstable government. But in Switzerland, on the contrary, it works remarkably well. Another important feature of the Swiss party system is the lack of an opposition. Unlike in Britain, the political system of the Swiss functions well without a loyal opposition. It is due to the fact that the Federal Council is always a coalition of important parties.

Switzerland is a country known for its uniqueness in many respects. It is the only country in the world where direct democracy exists and works well. Then, it is not a member of the U.N.O. Likewise as we have seen above, the political parties of the Swiss also have some peculiar characteristics different from the other modern political systems.

10.2 MAJOR POLITICAL PARTIES IN SWITZERLAND

There are about half a dozen political parties dominating the federal political system of Switzerland. What follows is a brief note on each of them.

LIBERAL PARTY

It is one of the oldest of the existing Swiss parties. It played a preponderant role in shaping the country's destinies. To this party belongs much of the credit for the creation of modern Switzerland and for the Constitution of 1848. Till 1890, the Liberals held a prominent place in federal government. Today the party is "a federalistic" i.e., States rights party, opposed to the increase of governmental power and composed primarily of French-speaking aristocrats and upper bourgeoisie" The main centres of its strength are Geneva, Lausanne, Nawchatel, Urban, Basle. It has suffered a decline and now it is little more than a "minor political group".

RADICAL DEMOCRATIC PARTY

Today the Radical Democratic Party is one of the strongest political parties of the Swiss political system. It has played an important role in

establishing a Centralistic liberal, secular and democratic state. Liberalism has also been the basic philosophy of this party. The Radicals have stood for the extension of political democracy through the institutions of direct democracy. i.e. referendum and initiative. It has been the chief sponsor of federal centralism, secularism, personal liberties and political democracy ..... these are the main planks of the party's platform. Basically, the Radicals favour government's non-intervention but in recent years they understand the need of state intervention for the protection of the society against the evils and abuses of all economic activities. For over seventy years, the Radicals have loomed large on the Swiss political scene. If the Liberal party deserves the major credit for laying the foundations of modern Switzerland, the Radicals can claim the major credit for having made the country what it is today.

CATHOLIC CONSERVATIVE PARTY

The Catholic Conservative Party, also known as the Christian Democrats.is next in importance in point of electoral strength. It is also one of the largest parties in the political system of the Swiss. Basically, this party was bitterly opposed to federalism. But, after its long collaboration with other parties, it has considerably changed this antipathy. Nevertheless, even today, this party is the 'real states' rights party. Its principle is "neither individualistic not liberal but frankly theocratic,".

SOCIAL DEMOCRATIC PARTY

In recent years the Social Democratic Party came to occupy an important place in the Swiss political system. The Social Democratic Party is supported by industrial workers, civil servants and other professional classes. From the outset, Swiss Social Democrats have claimed to be Marxian in character. According to Rappard, its programme is a curious combination of political liberalism, Marxian economics and ambitious planning. It has given up erstwhile anti-militarism and seeks, through planned economy, to achieve a blend of outright socialism and modified capitalism.

COMMUNIST (LABOUR) PARTY

It is the only leftist party in the country. For the present its following is small. The most important reason for its weakness lies in the stable economic and political conditions prevailing there and the absence of serious

dissatisfaction with the status quo. This party could never gain remarkable success owing to the strict control of the federal and cantonal governments and the prosperous life of the community.

MINOR PARTIES

In addition to these parties there are some minor parties in Switzerland such as the Liberal Socialists, the Democrats and the Independents. The Independents claim to represent the interests of the consumers and aim at "winning back outstanding personalities of politics."

ORGANISATION OF POLITICAL PARTIES IN SWITZERLAND

The Swiss political parties are not well-organised and their structure is not complex. They have a three level structure. At the base, there is a fairly large conference consisting of delegates from cantonal parties. Their main work is to adopt party policies, elect office bearers and give instructions to the other party organs. They meet atleast once in a year. In the middle there is a small organ usually called the central committee. Its main task is to direct the affairs of the party. It meets regularly. At the top there is a small body of about 20 to 24 members. It executes the decisions of the party organisation and provides leadership to it. Of special importance is the full time secretary who with a small staff maintains permanent headquarters at Berne.

However, the Swiss political parties play a role far more inferior to their counterpart in U.S.A., UK and France. In Switzerland the last word in the law-making system rests with people. It has virtually pushed the function of the parties into backwaters. Further, the Swiss people adhere to their neutrality in international sphere. Hence they do not inculcate seriously divergent interests as is found in other countries of the world. All these factors have made the political parties in Switzerland a 'Golden Zero'.

10.3 ELECTORAL PROCESS IN SWITZERLAND

There is nothing wrong in the Swiss system being described as "the most democratic of modern state systems." But the stigma of no suffrage to women that made the country as "one of the least democratic of modern democratic systems" has been done away with the amendment of 1971. Since direct as well as indirect democracy prevails, election takes place for the recruitment of legislators with the free and frank vote of the adult people.

Check Your Progress

1. Discuss the political system of Swiss.

Article 74 of the Constitution says "Every Swiss aged 20 or more has the right to vote at election and referendum. Federal legislation may regulate in a uniform manner the exercise of the right". Provision has also been made to deprive a Swiss citizen whether by birth or naturalisation, of the right to vote. Article 66 of the Constitution empowers the Federal Assembly to make a law in this regard. A Swiss citizen may be deprived of suffrage if she/he is found to be mentally incompetent of if he/she is found guilty of certain serious crimes or declared bankrupt. Some Cantons have added some other reasons in this regard as; When a person has become a public charge through his own fault, or has accepted service under a foreign power, or when he is forbidden entry into public places because of habitual drunkenness.

As a general rule, the electors, whoever it may be cast their votes in their places of residences. It means that Swiss people pay utmost regard to the principle of domicility. Some Cantons have made voting obligatory. In some it is obligatory in all elections, in a few only for cantonal elections, and in others only for federal matters. In some Cantons like St.Gallen, Schaffhausen, Aaragan and Thurgau, there is a nominal line for non-voting.

The method of proportional representation with List System prevails in Swiss general election. The making of a party list is a concern of the cantonal governments. To become eligible, a party must present a list of candidates to the cantonal authorities with 15 signatures of qualified electors within a prescribed time limit prior to the polls. The lists may contain fewer names than the number of seats assigned to the canton, but in no case more. If a candidate's name appears in more than one list, must within 3 days preceding the election choose the party on whose list he wishes to contest. After scrutiny of the nomination lists by the cantonal authorities, they are sent to Federal Council for their approval and official notification so that the voters may know about the candidates seeking election.

The voter is given as many votes as there are seats to be filled. He may cast one of the party ballots as it stands or he may eliminate some names with the option of replacing them with the names from other lists or he may cast his votes by composing his own list of nominees on official, non-partisn blank

ballot. On no account may the number of votes cast exceed the number of seats to be filled. After the polling is over, the total of all the party votes is first divided by the number of seats to be filled plus one. So the electoral quota is obtained to determine how many seats each party receives. In order to solve the problem of unapportioned seats after the application of electoral quota, further assessments are made. In the second and subsequent assessment; the total of each party's vote is divided by the number of seats already gained plus one. The first remaining seat is given to the party with the highest remainder. The process is continued until all the seats have been allotted.

10.4 PRESSURE GROUPS IN SWITZERLAND

The Swiss political system is an 'open' system where direct democracy still prevails. It tends to provide more opportunities for the open and direct participation for the interest groups in political process than does the system in United States. The pressure groups in the Swiss political system have their own characteristics. The role of pressure groups is integrated into normal political process in which multi-party system has its thorough prevalence. Though there are no sharp ideological cleavages between the parties, they do have their different approaches towards their matters. In Switzerland the pressure groups always find a party whose attitude reflects their chosen position and common cause. The system of proportional representation has also paved the way for the existence of numerous pressure groups. The working system of the Swiss legislature has also assigned a significant role to interest groups. Lengthy parliamentary sessions and poor salaries make it difficult for professional politicians to exist. The institution of direct democracy indulges in the role of interest groups to a great extent. Initiative and Referendum are thus the two important weapons not as much with the people as in the hands of the politically-wise interest groups whereby they can play their part in the political process of the country as per their respective interests. In Swiss system there are a number of pressure groups whose interests differ from purely business to labour, Agrarian and professional. The major groups either have their operation in the political process through some political party or through the institution of direct democracy.

Check Your Progress

2. Briefly write the Pressure Groups in Swiss.

The role of interest groups in the Swiss political system is not as potential of effective as we find in a country like the United States or France. It has failed to earn importance of first rank because of the 'traditional' attitude of

the people. By nature, the Swiss people are conservative and they do not like agitational and the highly shrewd methods of lobbying. The institution of direct democracy is the best means of the interest groups to manipulate the situation. The common people are politically backward and therefore feel disinclined to accept legislation involving far-reaching changes in the status quo. The result is that not the people as a whole, but the elite control the politics of the country through the operation of political pluralism.

10.5 DIRECT DEMOCRACY

Switzerland and democracy are synonymous. Switzerland is also called the home of direct democracy and direct legislation. To put it in the words of Lord Bryce nothing in Swiss arrangements is more instructive to the students of democracy, for it opens a window into the soul of the multitude. Their thoughts and feelings are seen directly, not reflected through the medium of elected bodies. Switzerland's heritage is direct democracy which still persists in a few of its cantons. In others where representative institutions have been established, initiative is still in practice. These instruments of direct democracy have been introduced in varying degrees in other countries also. But nowhere have they been used so widely and so successfully as in Switzerland. In the words of John Brown Mason, "the Swiss have developed referendum and initiative to such an extent that they have become virtually Swiss institutions.

Like all democratic countries Switzerland also possesses indirect or representative democracy. It means that the people rule not directly, but they exercise their sovereign power through elected representatives. But neither in the centre, nor in the canton do the legislatures exercise final power over legislation. On the other hand, "the elected representatives function subject to the final authority of the sovereign people who through the devices of referendum and initiative take a direct part in the making laws. So the Swiss democracy is plebilcitary rather than parliamentary. In Switzerland democracy remains direct and in delegating their powers, the Swiss people do not abdicate them. They always reserve the right to have the last word by referendum and perhaps the first word too by means of the popular initiative procedure".

10.6 REFERENDUM

The term referendum means "refer to the people". Referendum is a process by which the verdict of the people is sought on proposed law or

constitutional amendment and on which the legislature has already expressed its opinion. If it is approved by a majority of the people then it becomes law. If it is rejected, the measure is given up. To quote Zurcher, "the referendum is essentially an instrument which permits the people to vote or approve acts of representative assemblies". Thus, in Switzerland all constitutional amendments are submitted to a referendum In the same way a specified number of voters can also be demand that even an ordinary law passed by the legislature should be referred to people before it becomes effective. The term initiative is a postive device whereby the people can initiate a proposal. Article 120 of the Constitution provides that 50,000 Swiss citizens can initiate proposal for a complete revision of the Constitution. In 1891 popular initiative was broadened to include proposals for partial revision of the Constitution too. The Cantons, on the other hand, permit it to be used for changes in the Cantons Constitutioon and for changing the ordinary law.

There is a fundamental distinction between referendum and initiative. The institution of referendum refers to the power of the people with a veto on the acts of the legislature. The people can use their veto power even when a law has been passed by the legislature. Thus referendum is a negative institution which enables the people to protect themselves against arbitrary legislations. On the other hand, initiative is a positive institution. It enables the people to put on the statute books even those laws which legislators are not prepared to initiate and pass. In short, initiative is a creative institution which ceases laws ever if the legislature is opposed to it. It has rightly been pointed out that referendum is like a "shield with which the people ward off undesirable legislation" and initiative is like a "sword with which it cuts the way for the enactment of its own ideas into laws".

The referendum in Switzerland is of two kinds, optional and compulsory. When a law is submitted to the popular vote on a petition from a certain number of people, it is known as optional referendum. In the case of compulsory referendum all measures of a special type must be submitted to the people. In Swiss confederation, a referendum is compulsory for all revisions of the Constitution. In the optional form it exists on the demand of 30,000 citizens or eight Cantons for all laws and resolsutions that have a general application unless the Assembly declares the matter urgent. In the Cantons the referendum exists for all changes in the Constitution of the Cantons; It is obligatory in

character. As regards laws and resolutions passed by the Cantonal legislatures, the referendum is compulsory in eight Cantons, whereas it is optional in seven. In three Cantons three is no distinction between a compulsory and Optional referendum-in one Canton there is no referendum on laws. In Cantons governed by a Primary Assembly there is no need for a referendum, because it is in a mass meeting that the people elect their rulers and make laws. It is pure direct democracy in operation.

10.7 INITIATIVE

The initiative is also of two kinds – formulated and unformulated. When the initiative is in general terms it is the duty of the legislature to draft, consider to the pass the law. In the case of formulated initiative the bill comes in a complete form and it is the duty of the legislature to consider the same in the form in which it comes from the people. 50,000 citizens can demand a total revision of the federal Constitution. If the amendment is accepted by a majority of the people voting in a referendum new elections for the Federal Assembly are held and when the amendment is passed by the new Federal Assembly the same is submitted for the approval of the majority of the people and the majority of the Cantons.

In case of partial amendment of the Constitution the procedure depends upon the fact whether the initiatives is formulated. If the initiative is formulated in specific terms and if the Federal Assembly approves of it, the proposal is submitted for the approval of the people and the Cantons. If the Federal Assembly disapproves of it, it may advise the electorate to reject the proposal or itself my submit an alternative proposal along with the proposal coming from the people. If the initiative is in general terms, the Federal Assembly has two alternatives. If it approves of the proposal, it must submit the proposal to the people and the Cantons after drafting it into a Bill. If it is not in favour of the initiative, the questions whether there should be a revision or not is referred to the people. If the people vote in favour of it, the National Assembly must draft an amendment expressing the sense of the initiative proposal and submit the same to regular vote of the people and the Cantons.

The process of initiative in Cantons is that specific number of citizens can demand total revision of the constitution. An absolute majority of citizens is required for amending the Constitution. In case of ordinary laws, a prescribed

Check Your Progress

3. What is Compulsory Referendum?

number of citizens can propose a new law or submit the same to the council of the Canton. It is the duty of the council to refer the proposal to the people for approval of the amendment. It is the duty of the council of the Canton to prepare the law and send the same to the people for ratification. If the proposal comes from the people in a formulated form and not in general terms the council can oppose it and refer the same to the people for rejection or along with the same a counter-proposal of its own for acceptance or rejection.

10.8 CAUSES FOR SUCCESS OF DIRECT DEMOCRACY

It is to be observed that the demand for direct legislation in Switzerland has arisen out of a desire on the part of the people to have a direct hand in the making of laws. The reason is that the system has certain obvious advantages. In the first place, it is "the surest means of discovering the wishes of the people and an excellent barometer of the political atmosphere". It brings the people into direct association with the process of law-making and thus enables them to express their opinion directly. Indeed it enables the people to act the sovereign third chamber. In the second place, the referendum is the surest means of expression of genuine public opinion. In the third place, the referendum reduces the political highhandedness of the majority party. When a law is referred to popular approval, it depends upon the people to accept it or reject it. This is in fact real democracy as there referendum is bound of unity and training for the people. It is a system of direct democracy where John Stuart Mill's dictum "vigilance is the price of democracy" finds its fullest expression. It also helps in the political education of the people. It creates civic sense in them. Thus they become active participants in the affairs of the state. In the fourth place the referendum and initiative provide useful check on the tendency of the legislature to abuse its authority. In Switzerland the executive does not exercise vote on the legislature. Nor does one House override the other. They are coequal in powers. The only check available under the circumstances is that of the popular vote. In the United States of America, the necessary checks are provide by the President's veto and the Supreme Court's power of Judicial Review. In Britain the executive can use its power of dissolution to control the Parliament; in Switzerland the objective is to achieve through referendum and initiative. The Swiss President has no veto power. The Swiss Federal Tribunal is not empowered to determine the constitutionality of federal laws. The Swiss executive is completely subservient to the legislature. In Switzerland, the people,

in whom the sovereignty resides, must themselves exercise the right of dissolution and the right of veto. Finally, as Bryce says, "there must somewhere in government be a power which can say the last word and deliver a decision from which there is no appeal. In a democracy it is only the people who can put an end to controversy.

One of the main objections against referendum is that it undermines the prestige of the legislature and it has adversely reacted on the quality of membership. When the legislators know that their decisions are liable to be reversed they take little interest in the discharge of their duties. Lack of interest in the legislative affairs destroys the sense of responsibility of those who are entrusted with the task of rule-making. "If you introduce the "referendum" says M.Dubts, "parliament becomes merely a consultative committee. Its responsibility disappears because it no longer decides anything definitely". Secondly, it is also contended that referendum and initiative place in the hand of the people a power which they cannot properly use. In the opinion of Welti, an eminent Swiss statesman, the people will be found incapable of fulfilling of the functions of the legislator. Thirdly, the direct legislation also maintains that the participation of the individual voter is purely negative. When a bill is submitted to a referendum the voter can only say yes or no. The bill has to be accepted or rejected as a whole. There is no place for moving amendments. Finally in the direct legislation the decision reached in a referendum may actually be a minority decision. Moreover, direct legislation involves a great deal of expenses.

With all the criticism, the institution of direct democracy have come to stay in Switzerland and indeed they have become the constitutional system of the country. The Swiss people would overwhelmingly reject a proposal for the abolition. It is also not correct that the referendum has lowered the prestige of the legislature. The following is the anti-nuclear referendum conducted.

FOURTH ANTI-NUCLEAR REFERENDUM IN SWITZERLAND

"Strom ohne Atom" (Power without nuclear), a coalition of some 40 organizations, including anti-nuclear groups, Socialist and Green parties and environmentalists, did collect enough signatures to ensure a new national vote on two antinuclear initiatives within two years. (Published by WISE News Communique).

Check Your Progress

4. Furnish the reason for the success of Direct Democracy.

(518.5086) WISE Amsterdam - The action was announced at the August "Sun 21" conference in Basel on renewable energy. The first initiative seeks closure and decommissioning of the-five Swiss nuclear power plants after 30 years of operation. The second one, "Moratorium Plus", wants to extend the current moratorium on construction of new nuclear reactors, which expires in 2000, for another ten years. Some 121,000 signatures were collected for each of the initiatives, whereas 100,000 were required. The oldest Swiss nuclear reactor, Beznau 1, will reach its 30-year lifetime in December 1999. Beznau 2 and Muehleberg will complete their 30 years by 2002, Goesgen and Leibstadt will follow in 2009 and 2014.

Energy Minister Moritz Leuenberger, who is against nuclear power himself, commented that even when Switzerland unilaterally closes its nuclear reactors, the Swiss energy policy comes down to "trench fighting" and that nuclear energy will continue to flow into Switzerland from its neighbours. He may be right: Switzerland already imports a lot of nuclear energy from France and those nuclear imports would probably increase -after closure of Swiss nuclear reactors. But he sounds rather cynical: in case the referendum will be adopted, three nuclear reactors will already be closed by 2002, which will be a big victory for the Swiss anti-nuclear movement. The last Swiss nuclear reactor would then be closed in 2014.

This is the fourth referendum aimed at restricting or abandoning nuclear power in Switzerland. The first one dates back to 1979 and was lost; it proposed to make construction of nuclear reactors dependent from the community where it would be built. The second initiative, which was held in 1984 and called for a nuclear moratorium after construction of Leibstadt, also lost with a narrow-margin.

The third initiative was a partial success: a moratorium on construction of nuclear for ten years (until 2000) was adopted, but the proposal to gradually close the existing nuclear reactors was rejected.- In October 1998 the Swiss federal government voted for a gradual nuclear phase-out. The Ministers of Energy and Economy would negotiate the remaining lifetimes of the reactors. But at the same time the operation license of the Muehleberg reactor was extended for ten years and Leibstadt was allowed to raise its power for the

second time, now with 50 MegaWatt, to 1135 MW. Its original power output was 1045 MW.

SUMMARY

The activities and low profile of political parties is discussed. There are merits and demerits of Direct Democracy. Eventhough there are demerits. Direct Democracy functions well. Switzerland's political parties have special and good features. So direct democracy has become purest form of democracy. Swiss has become the most orderly and well governed state.

KEY WORDS

Referendum - Initiative - Lands gemeinde - Electoral fatigue.

ANSWER TO CHECK YOUR PROGRESS

For Question No 1	Refer Section 10.2
For Question No 2	Refer Section 10.4
For Question No 3	Refer Section 10.7
For Question No 4	Refer Section 10.8

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MODEL QUESTIONS

1. Political parties are not powerful entities in Switzerland, Explain.
2. Distinguish between Direct and Indirect Democracy.
3. Estimate the merits of Direct Democracy.

MODEL QUESTION - I

Answer any FIVE questions

Time: 3 hours Maximum : 100 marks

1. State briefly the contemporary approaches to the study of political systems.

2. Explain, with examples, the importance of conventions in Britain.

3. Explain how law is made by the Parliament in the United Kingdom.

4. State the reasons for the importance of the Prime Minister in the politics of the United Kingdom.

5. Explain American federalism.

6. Explain the manner of election and powers of the U.S. President.

7. What are the significant features of the Swiss federation?

8. Explain the composition and powers of the Swiss Executive.

9. Explain the method of election and duties of the French President.

10. Explain how Administrative Law operates in France.

EXAMINATION MODEL QUESTION PAPER - II

Time: 3 hours Maximum : 100 marks

Answer any FIVE questions

All questions carry equal marks

1. Classify and explain Constitutions on the basis of division of powers.

2. Define political culture and point out the significant elements of British political culture.

3. Explain the reasons for the importance of the executive in contemporary parliamentary systems of government.

4. Describe the composition, powers and utility of the British House of Lords.

5. Explain the process of law-making in the United States of America and point out the reasons for the importance of Congressional Committees in the legislative process.

6. Evaluate the method of amending the Constitution of the United States of America.

7. Explain the composition and functions of the Communist Party of the Soviet Union.

8. Explain the manner in which administrative law is implemented under the Fifth Republic in France.

9. Explain with illustrations, how judicial review helps to limit the powers of government.

10. Explain how direct democracy operates in Switzerland.